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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 246

FREDERICK S. DEITRICK, RECEIVER OF THE BOSTON-CONTINENTAL NATIONAL BANK, PETITIONER,

vs.

THOMAS E. GREANEY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED JULY 29, 1939.

CERTIORARI GRANTED OCTOBER 9, 1939.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1938.

No. 3415.

THOMAS E. GREANEY,

DEFENDANT, APPELLANT,

v.

FREDERICK S. DEITRICK, Receiver,

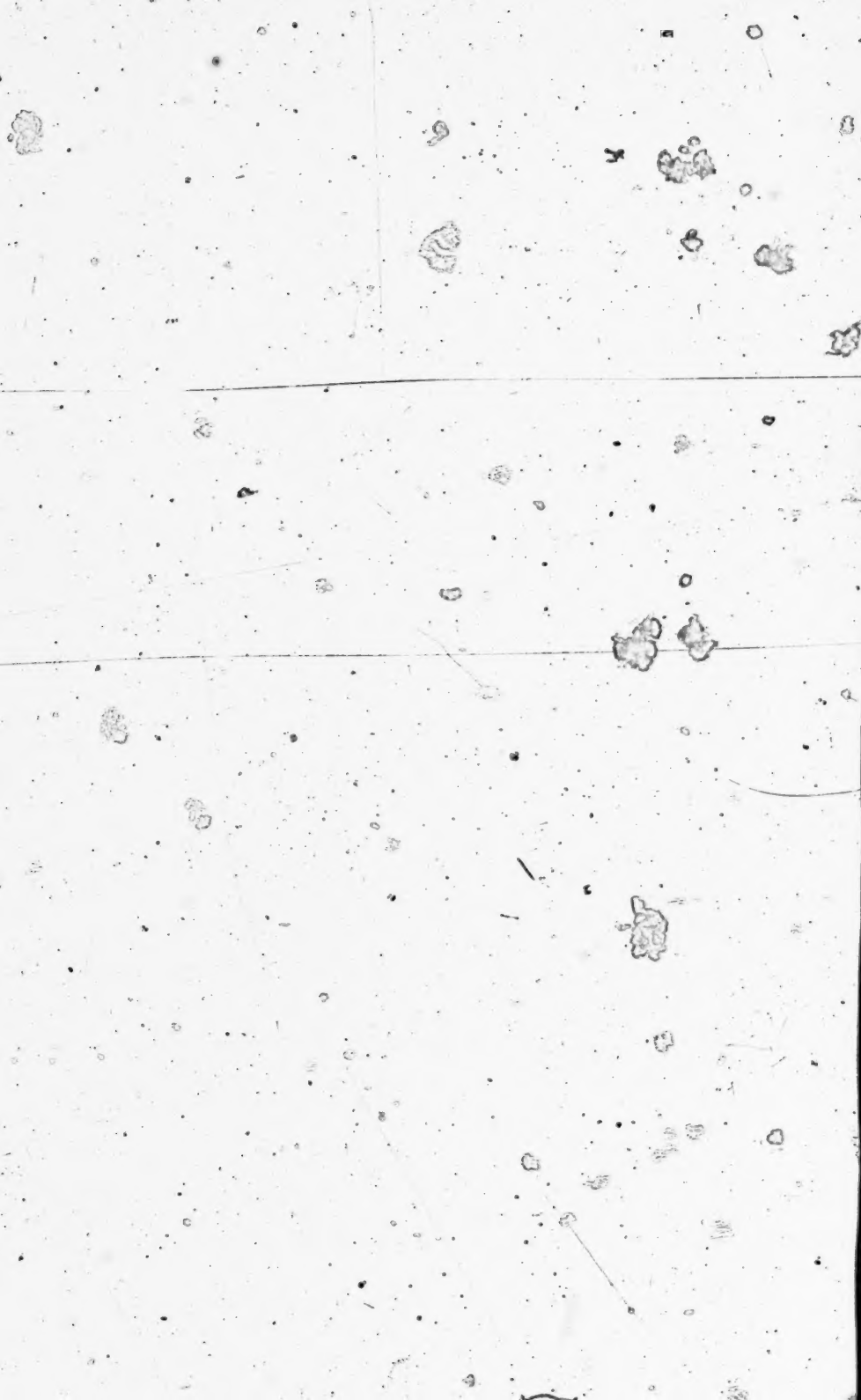
PLAINTIFF, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSESTS, FROM FINAL DECREE (SWEENEY, J.), JUNE 30, 1938.

TRANSCRIPT OF RECORD.

DAVID STONEMAN,
EMANUEL KURLAND,
DANIEL J. GALLAGHER,
for Appellant.

ANDREW J. ALDRIDGE,
BRENTON K. FISK,
for Appellee.



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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1938.

No. 3415.

THOMAS E. GREANEY,
DEFENDANT, APPELLANT,

v.

FREDERICK S. DEITRICK, RECEIVER,
PLAINTIFF, APPELLEE.

TRANSCRIPT OF RECORD OF DISTRICT COURT.

No. 4111, EQUITY DOCKET.

FREDERICK S. DEITRICK, RECEIVER BOSTON-CONTINENTAL NATIONAL BANK, PLAINTIFF,

v.

THOMAS E. GREANEY, NIMON KARNOW AND R. D. MAHONEY, DEFENDANTS.

The bill of complaint in this cause was filed in the clerk's office on the eleventh day of March, A. D. 1935, and was duly entered at the December Term of this court, A. D. 1934.

This cause was thence continued to the March Term, A. D. 1935, when, to wit, April 9, 1935, an answer was filed by R. D. Mahoney.

Also at the same term, to wit, April 23, 1935, an answer was filed by Nimon Karnow.

Also at the same term, to wit, June 8, 1935, a motion to amend the bill of complaint was filed by consent and allowed by the court, the Bill of Complaint as Amended being in the words and figures following:

BILL OF COMPLAINT AS AMENDED.

[Filed March 11 ,1935; amended June 8, 1935.]

To the Honorable Judges of the United States District Court for the District of Massachusetts:

Frederick S. Deitrick, the plaintiff above named, is a citizen of Massachusetts, residing in Middlesex County in said Commonwealth. The defendants, Thomas E. Greaney, Nimon Karnow and R. D. Mahoney, are each and all citizens of Massachusetts, said Greaney and Karnow reside in Suffolk County, and said Mahoney in Middlesex County, in said Commonwealth.

The plaintiff is receiver of Boston-Continental National Bank, a national banking association, under due appointment of the Comptroller of the Currency of the United States, and in such capacity prosecutes this action, the jurisdiction being based upon Section 24 of the United States Judicial Code.

1. On or about June 30, 1930, the defendant Thomas E. Greaney, who was a director of Boston National Bank, and the defendant Nimon Karnow, acquired from the said bank 190 shares of its own issued and outstanding capital stock which the bank had illegally acquired. Of these shares, 114 had been recorded and stood on the bank's stock register in the name of Reed and Company, 10 in the name of Bright Sears and Company, and 66 in the name of Ada Albert. Ostensible payment for these shares was made by or for the said two defendants out of funds of the bank itself, in the manner hereinafter stated.

2. Said ostensible payment was made by the bank's advancing to defendant Karnow, on a note for $23,500, signed Karnow Bros., the amount of $23,203.14, which amount was thereupon placed on deposit in National Shawmut Bank of Boston to the credit of defendant Greaney, who had previously given the Boston National Bank his own check upon the Shawmut Bank for the said amount, $23,203.14. The shares were thereupon transferred on the bank's records out of the names of Reed and Company, Bright Sears and Company and Ada Albert, into the name of defendant Greaney as the reputed owner of record thereof.

3. On or about October 17, 1930, these shares were changed from the name of defendant Greaney into the name of defendant Nimon Karnow, on the bank's records, as apparent owner thereof, and later, about December 26, 1930, as a result of due consolidation of Boston National Bank and Continental National Bank, under the name Boston-Continental National Bank, they became converted into 684 shares in said consolidated bank, having a par value of $20 each.

4. Thereafter, on or about March 3, 1931, the defendant Karnow caused certificates for 226.8 shares out of said 684 to be issued to Joseph Balter, and thereupon a credit of $9,500, being apparently proceeds out of a sale of said shares to Balter, was applied as a credit on the aforementioned note, reducing the note to $14,366.32.

5. On or about May 4, 1931, defendant Greaney gave Boston-Continental National Bank a note for $14,553,66 for which, after discount, he received from the bank a credit of $14,481.25, which credit was thereupon transferred to the account of Karnow Bros. in ostensible payment of their said note. A renewal note was given by Greaney to the bank in exchange for the original note, and, in turn, successive renewal notes have been given by him to the bank for preceding renewal notes, all substantially like the said original note. A full, true and correct copy of the last such note, being held by the bank, is hereto attached, marked "A". The unpaid principal amount of said note, $14,553.66, together with interest thereon, is due the plaintiff, the credits endorsed thereon being erroneous and not properly allowable.

6. About two days later, on or about May 6, 1931, defendant Karnow caused ceritficates for 457.2 shares, being the remainder of said 684 shares of the stock of said consolidated bank, to be issued to defendant R. D. Mahoney. According to the plaintiff's information and belief, said Mahoney is a son-in-law of defendant Greaney and the transfer to him was made in order to defeat liability of Greaney and Karnow for stock assessments in respect to the shares placed in his name.

7. On or about December 22, 1931, the Comptroller of the Currency of the United States, being duly satisfied that Boston-Continental National Bank was insolvent, appointed a receiver, who

forthwith took charge of all its properties and affairs. Thereafter, on or about July 11, 1932, the Comptroller duly assessed all owners of shares in the bank an amount equal to the par value of their shares, and due demand was made for payment thereof. A full, true and correct copy of the order making the assessment is hereto annexed, marked "B".

8. The amount of $13,680 with interest is due the plaintiff, and wholly unpaid, on account of the assessment upon the 684 shares of stock of Boston-Continental National Bank hereinafore mentioned.

Wherefore the plaintiff prays for relief as follows:

1. That the transfer of 457.2 shares of the stock of Boston-Continental National Bank from Nimon Karnow to R. D. Mahoney be adjudged null and void.

2. That defendants Thomas E. Greaney and Nimon Karnow be adjudged owners of said shares and that they and said R. D. Mahoney and each of them, be ordered to pay the plaintiff the amount of $9,144, with interest from August 18, 1932, as the assessment levied by the Comptroller of the Currency thereon.

3. That the defendants Thomas E. Greaney and Nimon Karnow and each of them, be further ordered to pay the further and additional amount of $14,553.66 with interest, being the amount of the obligation shown by the promissory note made by said Greaney, a copy of which is hereto annexed and marked "A", as aforestated.

BRENTON K. FISK,
Attorney for Plaintiff.

BRENTON K. FISK,
ALDRIDGE & FISK,
Attorneys for the Plaintiff,
44 School Street, Boston.

A

10903.66 1025-G
$14553.66/100 Boston, Mass. Nov. 3, 1931

Sixty days after date I promise to pay to the order of the
Boston-Continental National Bank
the sum of Fourteen Thousand Five Hundred Fifty Three 66/100

Dollars Payable at the Boston-Continental National Bank, together with all charges for the enforcement and collection hereof, waiving all benefits of whatever kind or nature that any Laws give or intends to give for the advantage or protection of the maker hereof.

Value received Thomas E. Greaney
123 Address 91 Essex St., Boston
No. 35 Date Jan. 4, 1932

Endorsements on back of note

Each endorser hereon specifically waives presentment demand and notice and waives all benefits of whatever kind or nature that any laws give or intend to give for the advantage or protection of the endorsers hereon.

Pd.	500.00	3/16/32	Pd.	50.00	5/29/33
	250.00	4/21/32		100.00	6/21/33
	500.00	5/13/32		100.00	7/14/33
	500.00	7/15/32		50.00	8/ 5/33
	100.00	10/ 3/32		100.00	8/22/33
	100.00	10/26/32		100.00	9/12/33
	100.00	12/14/32		100.00	9/28/33
	100 00	1/ 6/33		100.00	11/10/33
	100 00	1/30/33		100.00	11/29/33
	50.00	2/10/33		100.00	1/ 5/34
	50.00	2/21/33		50.00	1/16/34
	100.00	4/26/33		100.00	1/29/34
	100.00	5/12/33		50.00	2/10/34

B.

Office of Receiver BOSTON-CONTINENTAL NATIONAL BANK
Boston, Massachusetts

Boston, Massachusetts, July 11, 1932

You Will Please Take Notice, That the Comptroller of the Currency has, on July 11, 1932, levied an assessment upon the shareholders of Boston-Continental National Bank, Boston, Mass., of the par value of each and every share, payable at the office of the Receiver, on or before August 18, 1932.

The Receiver is, however, authorized by the Comptroller to grant an extension, without interest to shareholders who pay 25 per centum of the assessment on or before that date, and Who Will Give a Written Obligation Satisfactorily Guaranteed, to pay 25 per centum additional on or before September 18, 1932; 25 per centum additional on or before October 18, 1932, and the remaining 25 per centum on or before November 18, 1932.

Deferred Payments will bear interest after August 18, 1932, at the legal rate in the State of Massachusetts, except that interest may be abated in the case of any shareholder who pays one-fourth of his assessment on or before August 18, 1932, and who pays the remaining installments on or before the dates at which they mature under the terms of this extension.

You are therefore required to pay the assessment on the shares of stock standing in your name in accordance with the foregoing order and this notice. Your prompt compliance will be of great benefit to creditors of this trust and advance materially its early liquidation.

JOHN B. CUNNINGHAM, Receiver

$..... Boston-Continental National Bank

To..... Boston, Mass.

On the said eighth day of June, A. D. 1935, the following Stipulation was filed:

STIPULATION.

[Filed June 8, 1935.]

It is hereby stipulated and agreed by and between the plaintiff and the defendants in the above-entitled cause as follows:

1. The credits heretofore allowed upon the note shown as Exhibit A of the bill amounting to $3,650 shall be removed therefrom and transferred to, and allowed against, the note shown as Exhibit C thereof, with the same effect as if the said credits had originally been allowed upon the last mentioned, rather than the former, of said notes. It is admitted and agreed that there are no credits duly allowed against the note shown as Exhibit A, and that the credits

declared in respect thereto are erroneous and shall be wholly disregarded.

2. The defendant Greaney confirms, and expressly agrees to discharge fully, according to the purport thereof, the obligations evidenced by the notes shown as Exhibits C and D of the bill, subject to the credit of $3,650, aforementioned, and to such further credits as the plaintiff's records may duly show him entitled to have thereon.

3. Subject to the court's approval, the bill shall be amended in such a manner as to abandon further proceedings in the present action with respect to the obligations shown in said Exhibits C and D, but wholly without prejudice to the plaintiff either in respect to separate actions upon said obligations or in respect to the remaining issues of the present cause.

4. Furthermore, subject to the court's approval, the answers of defendants Karnow and Mahoney, which have heretofore been filed, shall be treated in all respects as answers made to the bill as amended.

BRENTON K. FISK,
Attorney for Plaintiff.

LOUIS G. STONE,
Attorney for NIMON KARNOW.

JAS. I. YOFFA,
Attorney for the Defendants,
GREANEY & MAHONEY.

At the same term, to wit, June 20, 1935, the following Answer of the Defendant Thomas E. Greaney to the Bill of Complaint as Amended was filed by leave of court:

ANSWER OF THE DEFENDANT THOMAS E. GREANEY TO THE BILL OF COMPLAINT AS AMENDED.

[Filed June 20, 1935.]

(1) The defendant Greaney admits that on June 30, 1930 he was a director in the Boston National Bank. He denies that he or the defendant Nimon Karnow acquired as owners from the bank 190 shares which the bank had illegally acquired. He is ignorant as to in whose name or names the stock stood, and therefore can neither

admit nor deny the allegations made in said paragraph. The defendant Greaney denies that payment ostensible or otherwise for the above shares was ever made by him.

(2) The defendant admits that Karnow caused to be executed a note in the sum of $23,500, and that the bank advanced thereon $23,203.14, and that the said sum was deposited to the account of the defendant Greaney, and that he simultaneously checked out the said amount in favor of the Boston National Bank.

The defendant further says that at his request based upon the request made by the responsible officers of the bank, said Karnow caused the said note to be executed as an accommodation for the bank, and that it was so understood by the officers of the bank.

The defendant has no present memory as to whether the stock ever stood in his own name, and therefore can neither admit nor deny the said allegation, but says further that if the stock ever stood in his name, it was for the convenience of the bank and of Karnow in that the bank retained ownership of the said stock and for indemnification of Karnow, in case he ever was called upon to pay the said note.

(3) As far as the defendant can determine the shares were finally, at the request of Karnow, transferred to him, and converted into Boston Continental National Bank stock, but is ignorant of the date of said transfer or conversion, and therefore can neither admit nor deny the same.

(4) The defendant admits the allegations contained in paragraph 4, but says further that Charles Ulin, president of the Boston National Bank, some time prior to March 3, 1931, turned over to your defendant notes amounting to $24,000, executed by one Balter and one Ragan, to be held as further security for the benefit of the said maker of the note.

(5) The defendant admits that on May 4, 1931, he gave his note in substitution for the Karnow note, at the request of Karnow, and with the consent of said bank, and further admits that no payment has been made by him on the principal of said note.

(6) The defendant denies that Karnow caused the said certificates to be issued to R. D. Mahoney, but says that the bank officials and he agreed that the certificates be held in the name of R. D. Mahoney for

the benefit of the bank and for the protection of the defendant, against being liable for the said note. The defendant denies that said transfer was made to defeat liability for stock assessment.

(7) The defendant admits the allegations in paragraph 7.

(8) The defendant can neither admit nor deny the allegation in paragraph 8, as he is ignorant of the facts contained therein.

(9) And further answering the defendant says that said note of Karnow dated June 30, 1930, and the defendant's note in the sum of $14,533.66, [*sic*] which arose therefrom, were given purely as an accommodation for the bank, at the request of the president of the Boston National Bank, Charles Ulin, under the following circumstances: The bank, so Mr. Ulin stated, had acquired certain shares of stock of its own issue which for some time it had carried as a cash item, and that it was imperative that someone in the wholesale district loan to the bank his note for the purpose of clearing up said item as a matter of bookkeeping, and to hold the said stock as security against any liability whatsoever; that Mr. Ulin had tried to get someone to do so, but had not succeeded. The defendant Greaney induced the defendant Karnow to do this for the bank, and accordingly on June 28, 1930 he executed his note in the sum of $23,500, and the proceeds therefrom were deposited by him to the defendant Greaney's account in the National Shawmut Bank on July 1, 1930, and Greaney's check was executed in favor of the Boston National Bank in the above amount, which check cleared on July 3, 1930.

On or about December 1, 1930 the stock held by the defendant Karnow unbeknown to him became part of a transaction for the purchase of the shares of stock in the Boston National Bank, and as a result, some of the stock held by Mr. Karnow was surrendered, and on March 11, 1931 the proceeds of $9,500 was applied by the bank toward the payment of the Karnow note.

In May, 1931, at the request of Mr. Karnow, and with the consent of the bank, the defendant Greaney substituted his note and placed himself in the same position as the said Karnow. Neither the defendants Karnow or Greaney ever received or intended to receive any benefit from this transaction, and the same was done purely as an accommodation for the bank. Neither Karnow, nor the bank, nor the

defendant ever contemplated or intended that either Karnow or Greaney or both should become the owners of the said stock.

The defendant Greaney therefore prays that the said bill of complaint be dismissed as against him, and for his costs.

By his Attorney,

JAS. I. YOFFA.

This cause was thence continued from term to term to the September Term, A. D. 1937, when, to wit, November 9, 1937, said cause was set down for hearing on the pleadings and the evidence and was heard in part by the court, the Honorable George C. Sweeney, District Judge, sitting.

At the same term, to wit, November 16, 1937, the following Motion to Transfer Suit to Law Side of the Court was filed by defendants Thomas E. Greaney and R. D. Mahoney:

MOTION TO TRANSFER SUIT TO LAW SIDE OF THE COURT.

[Filed November 16, 1937.]

Now come the defendants, Thomas E. Greaney and R. D. Mahoney, and move that said suit be forthwith transferred to the law side of the court in compliance with Equity Rule No. 22, to be there proceeded with, and assign as reasons therefor:

I. That it appears from undisputed evidence in support of the allegations of the bill of complaint that said bill seeks to enforce assessment on the full par value of the bank stock in question.

II. That for purposes of said assessment the plaintiff has a remedy at law, and no other remedy.

Aufdenkamp et al. v. *L'Herrison* (and cases cited therein), 56 F. (2nd S.) 344.

Armstrong v. *McAdams et al.*, 72 F. (2nd S.) 314.

American Trust Co. et al. v. *Grut*, 80 F. (2nd S.) 155.

III. That in so far as the suit seeks collection of the note of the defendant Greaney, the plaintiff has a plain, adequate and complete remedy at law.

IV. The bill of complaint alleges no ground of relief in equity

Wherefore, the defendants move that this cause be ordered transferred to the law side of this court, that the plaintiff be ordered to amend his bill accordingly and that such other orders as to costs or otherwise may be made as to the court may seem proper.

By their Attorney,

DANIEL J. GALLAGHER.

This cause was thence continued to the December Term, A. D. 1937, when, to wit, December 10, 1937, it was ordered by the court, the Honorable George C. Sweeney, District Judge, sitting, that the defendant's motion to transfer suit to the law side be denied, defendant's exceptions being saved.

On the said tenth day of December, A. D. 1937, said cause came on for further hearing on the pleadings and evidence, and was fully heard by the court, the Honorable George C. Sweeney, District Judge, sitting as aforesaid.

Also on the said tenth day of December, A. D. 1937, the following Motion of Respondent Nimon Karnow to Dismiss Bill was filed:

MOTION OF RESPONDENT NIMON KARNOW TO DISMISS BILL AS TO HIM.

[Filed December 10, 1937.]

Now comes the respondent Karnow at the conclusion of the hearing and before argument and moves that the bill of complaint in so far as it affects him be dismissed and assigns the following reasons therefor:

1. That the complainant did not introduce any evidence to bring this matter into equity.
2. That no evidence was introduced by the complainant in support of the allegations contained in the bill of complaint concerning him.

By his Attorney,

LOUIS G. STONE.

Said cause was thence continued under advisement to the March Term, A. D. 1938, when, to wit, June 16, 1938, an opinion of the

court was announced finding and ruling that defendant Greaney was liable for the stock assessment claimed by plaintiff and on his note in the sum of $14,553.66 with interest.

Said cause was thence continued to the present June Term, A. D. 1938, when, to wit, June 30, 1938, the following Final Decree for the plaintiff and dismissing bill as to defendants Nimon Karnow and R. D. Mahoney with their costs taxed at $ is entered in accordance with the aforementioned opinion:

FINAL DECREE.

June 30, 1938.

FORD, J. This cause came on to be further heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed, as follows, viz:

1. That the plaintiff recover from the defendant Thomas E. Greaney the sum of $32,582.54 (which sum is made up as follows: principal amount due on note $14,553.66, with interest on said note from January 4, 1932 to June 30, 1938 in the amount of $5,666.20 and principal amount due on stock assessment $9,144, with interest on said stock assessment from August 18, 1932 to June 30, 1938 in the amount of $3,218.68) and costs taxed at $

2. That the bill of complaint be dismissed as to the defendants Nimon Karnow and R. D. Mahoney, with their costs taxed at

By the Court,

JOHN E. GILMAN, JR.,
Deputy Clerk.

June 30-38.

F. J. W. F.,
D. C.

From the foregoing final decree, a notice of appeal to the United States Circuit Court of Appeals for the First Circuit was filed by Thomas E. Greaney, defendant, on the twenty-eighth day of September, A. D. 1938.

OPINION.

June 16, 1938.

SWEENEY, J. This is a suit in equity brought by the receiver of the Boston-Continental National Bank to enforce a stock assessment on 457.2 shares of stock of the bank, against these defendants, individually and jointly, and against the defendants Greaney and Karnow, to enforce the payment, with interest of a note signed by defendant Greaney in the sum of $14,553.66.

FINDINGS OF FACT.

For the purpose of clarity, the Boston National Bank will hereinafter be referred to as the Boston, the Continental National Bank will be referred to as the Continental, and the consolidated Boston-Continental National Bank will be referred to as the Boston-Continental.

Early in 1930, the Boston found itself in a position where it was the owner of 190 shares of its own stock. This ownership came about by the purchase of the stock from one of its directors who threatened to dump it on the open market. Fearing the result of such action, the bank took the stock over, and carried it as a cash item. Such ownership was in violation of the National Banking Act, 12 U.S.C.A. § 83. In order to conceal this illegal ownership, a scheme was devised whereby the note of some third person would be carried on the bank's books as a receivable, and the stock would be carried on the records either in the name of that third person, or in someone's name other than the bank.

The defendant Greaney was a director of the Boston, and after conference with one Ulin, who was president of the bank, he prevailed upon the defendant Karnow to execute a note in the sum of $23,500 as an accommodation to the bank. Karnow was a small depositor in the Boston, and never intended to pay the note or become a purchaser of its stock, or to do anything other than to accommodate the bank, probably in the hope that in a pinch the bank would return the favor.

Karnow's note was discounted by the bank, and he received from it a check in the sum of $23,203.14. In accordance with the agreement between the parties, Karnow deposited this check in another bank to

the credit of the defendant Greaney. Greaney issued his check drawing against this sum, and paid the money to the Boston. The shares were then transferred on the books of the bank to the defendant Greaney.

When the Karnow note became due he was prevailed upon to renew it, which he did against his better judgment. Shortly thereafter he caused the stock to be transferred on the bank's records from Greaney's name to his own, and took actual possession of the certificates. I find that even at this time he did not intend to become a purchaser of the bank's stock, but merely took the certificates as security. From this time on, Karnow repeatedly made efforts to have his liability on the note cancelled, but, between Ulin and Greaney, he was prevailed upon to make several renewals of the original note.

In September of 1930, a consolidation was proposed by the officers of the Continental whereby the Boston-Continental would be formed. Ragan and Balter were the guiding geniuses of the Continental, and were the originators of the proposed consolidation. Ragan intended to have control of the consolidated bank, and, for that purpose, was in the market for shares of the old Boston. A purchase price was agreed on between the Boston and Ragan for the purchase of the shares here involved at $150 a share. Not having the ready money to consummate the deal, Ragan and Balter issued a series of notes, and delivered them to the bank. The bank then turned three of the notes, aggregating $24,000, over to Greaney with instructions that when they were collected, the stock now standing in Karnow's name, was to be transferred to Ragan and Balter. Greaney was to secure the release of such shares from Karnow as were needed to cover any payments made by Ragan and Balter on their notes which were held by Greaney.

In December of 1932, the consolidation was effected, and Ragan became the president of the Boston-Continental. Under the plan of consolidation, the 190 shares of Boston stock, standing in the name of Karnow, became convertible into 684 shares of the new stock. In March of 1931, the first Ragan and Balter note became due and was paid. This was in the sum of $9,500; and on receiving payment Greaney surrendered one of the notes in that same amount, and Kar-

now released the requisite amount of stock. On the books of the bank Karnow was credited with the payment of $9,500 on his note.

Karnow found that his participation in this transaction, and the effect of having his note outstanding in the bank was reflecting on his credit in his indivdual business. Becoming more insistent, he prevailed upon the now consolidated bank to release him from liability on the note, which was done. Greaney substituted his note to the bank in the sum of $14,553.66. When the Greaney note was discounted the bank's check was used to discharge the Karnow note. So far as it is pertinent to the issues, I find that it was agreed between Ragan and Greaney that the latter should hold the stock turned over by Karnow on the same terms as Karnow had held it. Greaney, however, did not carry the stock in his own name, but registered it in the name of R. D. Mahoney, the third defendant here. For all intents and purposes, notwithstanding the agreement between the bank and Greaney to the effect that he was to stand in Karnow's shoes, Greaney became the owner of this stock at this time, although he caused it to be registered in the name of Mahoney. He did this without Mahoney's knowledge or consent, and Mahoney was never informed of this fact or of anything about this transaction, received no dividends, and, in fact, knew nothing of it until suit was instituted by the plaintiff.

On December 22, 1931, the Boston-Continental closed its doors, and a receiver was appointed to administer its affairs. On July 11, 1932, the Comptroller of the Currency made an assessment against all owners of shares in the bank in an amount equal to the par value of their shares in accordance with Section 5151 of the Revised Statutes of the United States, and due demand was made for payment thereof. The assessment on the 457.2 shares here involved has never been paid.

Conclusions.

I find and rule that Mahoney has overcome any presumption of ownership that arose from the fact that his name was carried on the books of the corporation as a stockholder. See *Finn* v. *Brown*, 142 U. S. 56, 67.

We next pass to the question of liability of the defendant Karnow.

At the time that the bank closed, the Karnow note was not a receivable in the hands of the receiver, it having previously been discharged by the bank's acceptance of the Greaney note in May of 1931. Likewise, Karnow was not a stockholder in the bank at the time that it closed its doors—his stock certificate having been surrendered in May, on the strength of which a new certificate was issued to Greaney standing in the name of Mahoney. The Karnow transfer of stock I find to have been in fact an out-and-out transfer made in good faith, and not under apprehension of the failing condition of the bank. See *The Germania National Bank of New Orleans* v. *Case*, 99 U. S. 628. In all his actions Karnow shows clearly that the registration of the stock in his name was never intended to be a purchase by him of the stock, but was only for the accommodation of the bank. In any event, he divested himself of whatever title he had, long before the bank failed.

Passing to the defendant Greaney, I find an entirely different situation prevailing. It must be borne in mind that Greaney was a director of the old Boston bank as well as of the new Boston-Continental, and, as such, is chargeable with a higher degree of responsibility than either Karnow or Mahoney. The fact that he may have agreed with Ragan that he would stand exactly in Karnow's shoes when he took over the Karnow obligation cannot affect the fact that he was a director of the bank, that he had a more intimate knowledge of the transaction than either Karnow or Mahoney, and that he owed a duty to the depositors of the bank to protect their interests. What may have been a legitimate activity for Karnow was not a legitimate one for Greaney. On his own story, he was involved in a scheme, the purpose of which was to deceive the national bank examiners, and to conceal a violation of the National Banking Laws. It is quite true that Karnow had participated in this matter, but he did so as an outsider, and owed no duty to the depositors of the bank. Karnow also extricated himself from the entire situation seasonably, and did so under circumstances which lead this court to believe that he did it in good faith and without apprehension of the failing condition of the bank. Greaney cannot establish his immunity from liability on this note by a claim that he stands on an equal footing with Karnow. See

Lyons v. *Westwater*, 181 Fed. 681; 193 Fed. 817. The reasoning in this case seems also to fix the liability for stock assessment squarely on the shoulders of Greaney. As between Greaney and Mahoney, there can be no doubt that Greaney had the title to this stock for Mahoney had no knowledge that his name was even being used in the transaction. As between the bank and Greaney, prior to the bank's closing of its doors, there might be some question of the right of the bank to insist that Greaney was the owner of that stock. As between the receiver, who stands in the shoes of the creditors, the depositors, and the general public, Greaney is estopped to deny the ownership of the stock on the reasoning of *Lyons* v. *Westwater, supra.* He had held himself out to the public, to the bank examiners, to the Comptroller General, and to the depositors of the Boston-Continental as an owner of stock either in his own name or in the name of Mahoney. To now be allowed to retract these representations would effect a fraud on all the parties. I therefore find and rule that Greaney is liable for the stock assessment claimed by the plaintiff. I therefore find and rule that the defendant Greaney is liable to the plaintiff on his note in the sum of $14,553.66 with interest.

A decree may be submitted in accordance with the above.

NOTICE OF APPEAL.

[Filed September 28, 1938.]

Notice is hereby given that Thomas E. Greaney defendant above named, hereby appeals to the Circuit Court of Appeals for the First District, fr[redacted]he final decree entered in this action on June 30, 1938.

[redacted]NIEL J. GALLAGHER,
Attorney for Defendant THOMAS E. GREANEY,
209 Washington Street, Boston, Mass.

DEFEN[redacted]MAS E. GREANEY'S CONDENSED STATEMENT OF TESTIMONY.

[Filed September 28, 1938.]

On April 23, 1930, the Boston National Bank issued its cashier's check in the amount of $28,203.14 and received therefor 190 shares of its own stock. The bank held this stock in lieu of its cashier's check as a cash item from April 23, 1930 to June 30, 1930.

The stock of the Boston National Bank had an active daily market during this period, *i. e.*, from April 23, 1930 to June 30, 1930, varying from $163 to $140 per share.

This ownership of the stock was in violation of the National Banking Act, 12 U. S. C. A. s. 83.

In order to conceal this illegal ownership, Charles Ulin, the president of the bank, devised a scheme whereby the note of some third person would be carried on the bank's books as a receivable, and the stock would be carried on the records either in the name of that person or in someone's name other than the bank.

Mr. Ulin conferred with the defendant Greaney, who was a director of the Boston National Bank, sometime in the latter part of June of 1930 and prevailed upon Greaney to persuade the defendant Karnow to execute a note in the sum of $23,500 as an accommodation to the bank. Karnow was a small depositor in the Boston National Bank, and never intended to pay the note or become a purchaser of its stock, or to do anything other than to accommodate the bank.

Karnow's note was discounted by the bank, and he received from it a credit in the sum of $23,203.14. In accordance with the agreement between the parties, Karnow deposited his check for that amount in another bank, to the credit of the defendant Greaney. Greaney thereupon issued his check for this sum, payable to the Boston National Bank. The shares were then transferred on the books of the bank to the defendant Greaney.

When the Karnow note became due, he was prevailed upon to renew it, which he did against his better judgment. Shortly thereafter he caused the stock to be transferred on the bank's records from Greaney's name to his own, and took actual possession of the certificates. Karnow did not intend to become a purchaser of the bank's stock, but merely took the certificates as security. From this time on, Karnow and Greaney repeatedly made efforts to have Karnow's note cancelled.

In September of 1930, a consolidation was proposd by the officers of the Continental National Bank whereby the Boston-Continental National Bank would be formed. Ragan and Balter were the execu-

tive officers of the Continental National Bank and were the originators of the proposed consolidation.

A purchase price of $150 per share was agreed on between the Boston National Bank and Ragan for the purchase of a block of shares in which the 190 shares, above referred to, were included. Not having the ready money to consummate the deal, Ragan and Balter issued a series of notes, and delivered them to the bank. The bank then turned three of the notes, aggregating $24,000, over to Greaney with instructions that when they were collected, the stock now standing in Karnow's name, was to be transferred to Ragan and Balter. Greaney was to secure the release of such shares from Karnow as were needed to cover any payments made by Ragan and Balter on their notes which were held by Greaney.

In December of 1932, the consolidation was effected under the charter of the Boston National Bank and Ragan became the president of the Boston-Continental National Bank. Under the plan of consolidation, the 190 shares of Boston National Bank stock, standing in the name of Karnow, became convertible into 684 shares of the new stock. In March of 1931, the first Ragan and Balter note became due and was paid. This was in the sum of $9,500. Greaney surrendered one of the notes in that same amount, and Karnow released the requisite amount of stock. On receiving payment, the bank credited Karnow's note with the payment of $9,500.

Karnow found that his participation in this transaction, and the effect of having his note outstanding in the bank was reflecting on his credit in his individual business. Becoming more insistent, he prevailed upon the now consolidated bank to surrender his note to him.

Greaney was prevailed upon by the bank to substitute his note in the sum of $14,553.66. This note was discounted and the bank's check was issued to discharge the Karnow note. It was agreed that Greaney should hold the stock turned over by Karnow, on the same terms as Karnow had held it and that he was to stand in Karnow's shoes. After consultation between the officers of the bank and Greaney, the stock was registered in the name of R. D. Mahoney, the third defendant. Mahoney had no knowledge nor did he consent to,

nor was he ever informed about this transaction and knew nothing about it until suit was instituted by the plaintiff.

The District Court has found that:

> "For all intents and purposes notwithstanding the agreement between the bank and Greaney to the effect that he was to stand in Karnow's shoes, Greaney became the owner of this stock at this time."

The following, by questions and answers, is the only evidence relevant to the facts in this aspect of the case (Testimony of Thomas E. Greaney, December 10, 1937, pages 8, 9, and part of 10 of said testimony):

> *A.* Carney and I went down and saw Reagan and we said to him, "Now Carney's note has been reduced by ninety five hundred dollars, but he still wants to get through with it. He wants to be released on the note. He does not want to carry it any longer. He would like to have you find somebody else." Carney said, "Yes, I would. I don't want to be on that note. I have been on there quite a while and I want to get through with it." Reagan said, "We will find somebody to take your place. We will get somebody. Just have a little more patience."
>
> *Q.* 1. I think that was in April. *A.* Shortly after that payment anyway, and I used to meet Carney quite frequently on the street, and every time I would see him he would say, "What are they going to do with me down there? I want to get off the note. I am not in the bank." I said, "Well; we will go down once more." Finally he said to me, "I am not in the bank now, and I can't get accommodation there, and I need some money for my season and can't borrow some money. But if I show it in my statement, they will not give me a line of credit. I will have to disclose the note in my statement, but I can't explain to them what it is. It has come to a time I will have to get out of it." We explained to Reagan. Reagan says, "I haven't a substitute for it now. I don't know who to put on there." He says, "Why don't you take it?"
>
> *Q.* 2. Was this the second visit to Reagan? *A.* Yes. That

was the next visit. I says, "I don't want to take it. I don't want to sign a note for a note like that." He said, "Well you sign a short note, one for about thirty days", and I said, "Can't you make it fifteen days?" He said, "No, I want to make it thirty days to have a little breathing space to get hold of somebody", and I signed the note for thirty days. That was in May, I am quite sure, and Carney sent the stock he was holding down to the bank. Reagan told me, he said, "You hold that stock same as Carney has. You have the stock. You hold it the same way Carney did, and we will probably get another man."

Q. 3. Go on from there. *A.* A little while after that the cashier of the bank telephoned me, a fellow by the name of Schofield, and said "We have got that stock down here. Whose name do you want it put in?" I says, "I don't know. It is up to the bank, isn't it?" He said, "No. Don't you know anybody?" I says "No". "Well", he said, "I don't know. Can't you give me a name?" I said, "No, not off hand." He said, "Why don't you come down and see Reagan?" I went down and saw Reagan and I said, "I just received a call from Mr. Strobel, and he asked me to find a name to put the stock in." So Reagan thought a minute and said, "I don't know. You have got to find somebody satisfactory to us, and he ought to be satisfactory to you too. You are middle man here. You are holding the stock." I said, "You can't suggest anyone", and he said, "Well, no, I can't off hand. Can you think of somebody?" I said, "Well, I have a son-in-law. Perhaps we can put it in his name." He said, "That will be all right"; asked me what his name was, and I gave it to him.

Q. 4. What name did you give him? *A.* Raymond D. Mahoney.

Q. 5. He is your son-in-law? *A.* Yes.

Q. 6. In consequence of that, what happened? *A.* The stock was made out in that name and sent to me.

On December 22, 1931, the Boston-Continental Bank closed its doors, and a receiver was appointed to administer its affairs. On July 11, 1932, the Comptroller of the Currency made an assessment

against all owners of shares in the bank in an amount equal to the par value of their shares in accordance with Section 5151 of the Revised Statutes of the United States, and due demand was made for payment thereof. The assessment on the 457.2 shares here involved has never been paid.

Shortly after the plaintiff closed his case, the defendant moved for a transfer of the cause to the law side of the court under Equity Rule 22, which the court denied and to which denial the defendant excepted.

DANIEL J. GALLAGHER,
Attorney for Appellant THOMAS E. GREANEY.

PLAINTIFF-APPELLEE'S STATEMENT OF ADDITIONAL TESTIMONY.

[Filed October 6, 1938.]

Plaintiff-appellee hereby files the following statement of the testimony of Harold J. O'Donnell, Nimon Karnow (whose name has erroneously been spelled C-a-r-n-o by the reporter), R. D. Mahoney and Thomas E. Greaney, for inclusion in the record pursuant to Rule 75, Federal Rules of Civil Procedure:

HAROLD J. O'DONNELL, plaintiff's first witness, testified as follows:

I was in charge of Boston-Continental National Bank's loan department when the bank suspended, and ever since then I have been, and am, assistant to the bank's receiver. I have full access to the bank's records and am familiar with them. I have searched those records for information in respect to this case. In and as a part of the bank's regular business records, I have found the following, which bear on the facts of this case:

[It was agreed, with the court's approval, that in lieu of testifying from the records the witness might introduce the records and that photostatic copies thereof might be filed in lieu of the originals.]

EXHIBIT 13. A sheet from the bank's stock holder's ledger, on which it appears that on 5–6–31, certificate 1295 of Boston National Bank and certificates 709 and fractional certificate 237 of Boston-Continental National Bank, all outstanding in the name of Nimon

Karnow, were surrendered and in lieu of them there were issued to R. D. Mahoney certificates 929 to 933 (both inclusive) and fractional 311, representing 457.2 shares of Boston-Continental National Bank stock; also that on September 10, 1931, said certificate 933, representing 57 shares, had been surrendered and reissued to said Mahoney in two certificates, 1085 for 37 shares and 1086 for 20 shares.

EXHIBIT 14. The bank's stock transfer book record showing the May 6, 1931 part of the same transaction.

EXHIBIT 15. The bank's stock transfer book record of the September 10, 1931, part of the same transaction.

EXHIBIT 16. The stubs in Boston-Continental National Bank's stock book, from which certificates 929-933 had been detached, bearing the usual record; also certificate 933, affixed to the stub (933) from which it had been detached. This certificate, for 57 shares, issued in the name of R. D. Mahoney under date of May 6, 1931, bears on its back an ordinary stockpower which appears to have been signed "R. D. Mahoney". The certificate is endorsed "Cancelled". Each of the stubs 930 to 933 (both inclusive) bears the notation "See 929". On stub 929 is a record that Boston National certificates 1295, dated October 17, 1930; and Boston-Continental National Bank certificate 709 and "Frac. 237", dated March 12, 1931, representing altogether 457.2 shares were all being transferred. Stub 929 bears the further notations *"From whom transferred* Nimon Karnow" and *"Issued to* R. D. Mahoney." There is a pencil notation at the bottom of stub 929 reading, "Mailed 5-7 to Thomas Greaney thru 933".

EXHIBIT 17. Stub of certificate 1085, containing record showing transfer *from* R. D. Mahoney of original certificate 933 for 57 shares, dated May 6, 1931, and issuance of certificate 1085 *to* R. D. Mahoney for 37 shares. The stub bears the notation, "See #1086" and also bears, pasted upon it, a receipt which reads, "Received Certificate No. 1085 & 1086 For 57 Shares this 10th day of September, 1931. J. A. Geary".

EXHIBIT 18. Sheet from "Stockholders Ledger Boston National Bank" showing record of Nimon Karnow as an owner of certificates 1295, 1296 and 1297, issued October 17, 1930, for 190 shares. There is an endorsement on this sheet reading, "Transferred to Boston Con-

tinental Nat'l Bank: Certificate No. 1296 & 1297 into 706-709 & Frac. 236 & 237.—1295 into 929-933."

EXHIBIT 19. "Stock Holder's Ledger" sheet in name of Nimon Karnow recording on 3-12-31 the surrender of "Bos. Nat." certificate 1297 (27 shs) and issuance of certificates 709 and 237 for 97.2 shares; also, on 5-6-31, surrender of 709 and 237 and issuance of 929 & Frac. 311 to R. D. Mahoney.

EXHIBIT 20. Stock-transfer book sheet of Boston-Continental National Bank showing two transactions, both of March 12, 1931, in which stock was transferred from Karnow as follows:

Cert. Surrendered Nos. Bos. Nat.	Shares	Cert. Issued Nos.	Shares	Transferred to
1296	50	706	100	Joseph Balter
1297	13	707	100	
		708	26	
		F. 236	0.8	
Bos. Nat.				
1297	27	709	97	Nimon Karnow
		F237	0.2	

EXHIBIT 21. The stubs, and attached cancelled stock certificates, Nos. 1295 for 100 shares, 1296 for 50 shares and 1297 for 40 shares, of Boston National Bank. The record on the stubs, and on the certificates shows transfer of all these 190 shares from Thomas E. Greaney to Nimon Karnow on October 17, 1930, out of certificates 1236, 1240, 1237, which had been issued to Greaney as apparent owner under date of June 30, 1930. The power of attorney on the back of each of these cancelled certificates is signed Nimon Karnow. The stock powers on the backs of 1296 and 1297 are signed in blank; but on 1295 the name R. D. Mahoney has been written in as assignee of its 100 shares. All bear the United States revenue stamps required for transfers.

EXHIBIT 22. Cancelled stock certificate and stub 709, for 97 shares of Boston-Continental National Bank stock, showing issuance to Karnow out of Boston National Bank certificate 1297, owned by Karnow, dated March 12, 1931.

EXHIBIT 23. Sheet from "Stockholders' Ledger" Boston National

Bank" showing record of Thomas E. Greaney. Shows ownership of 15 shares prior to June 30, 1930; acquisition on June 30, 1930 of certificates 1236 for 100 and 1237 for 80 additional shares; acquisition on July 10 of certificate 1240 for 10 more shares; disposal on October 17, of certificates 1236 for 100 shares, 1240 for 10 shares, and 1237 for 80 shares. Also shows payment of $358.75 dividends to shareholder on 8-1-30.

EXHIBIT 24. Boston National Bank cancelled stock certificates, and attached stubs 1236 for 100 shares, 1237 for 80 shares and 1240 for 10 shares issued to Thomas E. Greaney as their owner. Numbers 1236 and 1237 are dated June 30, 1930, and 1240 is dated July 10, 1930. The stock power on the back of each of these cancelled certificates is signed by Thomas E. Greaney, whose signature is known to the witness. The stock powers on 1236 and 1237 are each dated July 1, 1930, and the power on 1240 is dated July 17, 1930.

EXHIBIT 25. The witness testified that exhibit 25 was a tabulation made by him from the records which he had just finished putting into the evidence in this case; and that this tabulation is correct, according to such records. Exhibit 25 was thereupon offered and received, as an aid to the court in clarifying the evidence which the witness had already submitted.

The witness also further testified as follows:

(10) I know the name J. A. Geary on the receipt attached to the stub for certificate 1085. It is the name of a young woman who used to answer Greaney's telephone when I called his office. (11) The record shows that the shares issued in Mahoney's name were standing on the records in Karnow's name at the time of issuance to Mahoney. (12) The records show the derivation of Karnow's shares. On Exhibit 20 is shown, in two entries, a transaction in which Karnow had shares represented by old certificates issued in part to Joseph Balter and the remainder re-issued to himself. (13) Certificates 1295, 1296 and 1297, for 190 shares of Boston National Bank stock are shown by the record to have been issued to Karnow out of stock standing in Greaney's name as record owner. (14) We have the certificates themselves, Nos. 1236, 1237 and 1240, that had been issued to Greaney for those 190 shares, later issued to Karnow. [They are

offered as Exhibit 24.] I know Greaney's signature and that Greaney's signature is signed to the stock power on each of the certificates 1236, 1237 and 1240. (15) The pencil notation on the bottom of stub 929 was there when I first saw the record, a year or two ago. I do not know who wrote it. It indicates that certificates 929 through 933 were mailed May 7 to Greaney. (17) The note set forth in the bill of complaint is held by the bank as an asset; is wholly unpaid; and there are no credits allowable against it. The full original amount of the note, $14,553.66 and interest, is due to the bank and unpaid. (18) It is one of a succession of three renewal notes. The original transaction appears from the records to have been a loan of $14,553.66 to Greaney on May 4, 1931.

Plaintiff's Exhibit 28 is a cashier's check in the amount of $14,481.25 issued by the bank to Greaney on that date, endorsed payable to the order of Karnow Brothers, and endorsed by Karnow. The name Karnow Brothers was a trade-name under which defendant Karnow carried on business. This cashier's check connects with a note for $23,500 payable to the order of the bank, which Karnow Brothers on June 28, 1930, made. Successive renewals of that note had brought the amount of the transaction to $23,866.32 when, on March 11, 1931, a credit of $9,500 had been entered against that amount, leaving a balance of $14,366.32, which balance appears from the records to have been paid on May 4, 1931, the date when the cashier's check to Greaney, endorsed to Karnow, had been issued. (23.)

Exhibit 33 is a photostat of Greaney's account with the National Shawmut Bank and of the front and back of his check, dated June 30, 1930, for $23,203.14 payable to Boston National Bank.

The shareholders' ledger sheet containing the record of shares issued to Greaney (Exhibit 23) shows payment of $358.75 to Greaney on August 1, 1930, as a dividend on his bank shares

The amount of Greaney's check to the bank, $23,203.14, is exactly the same amount as had been paid by the bank on April 23, 1930, by its cashier's check to Reed & Company (24) for 164 shares of the bank's stock. That is the same amount which was withdrawn by Karnow on his $23,500 note.

On *cross-examination* the witness testified as follows:

On June 26, 1930, there was only $23.32 credit to Karnow on his commercial account in the bank. (27) After June 26 there were only three credits to that account, one for $89.27 on July 12, and one for $88.86 on August 11, and one for $88.44 on September 9. I cannot say whether, by June 26, 1930, Karnow had practically ceased doing business with the bank. The three credits, just mentioned, are represented as "mortgage payments"—probably collections on a note left with the bank.

The records show that Karnow had no indebtedness to the bank on June 19, 1930. His liability card shows "total direct, 0; total indirect, 0; secured, 0, 6-19-30". Subsequent to that time he made no deposits, except for the three credits which I have just mentioned. His highest indebtedness to the bank since April had been $16,000.

On being later recalled for further cross-examination (84) the witness testified:

There is a debit of 11-29-30 against Karnow Brothers in the amount of $23,806.81, representing a note due the bank. On March 11, 1931, that note was renewed for only six days in the amount of $23,866.32, being then over-due. On March 17, 1931, there was a credit of $9,500 on it. The note then continued to lie in the over-due department until May 4, 1931, when a credit of $14,366.32, the entire balance, with accrued interest, was entered against it, showing payment. Between March 17 and May 4, while that note lay in the bank over-due, Karnow is shown by the records to have discounted customer's notes in the bank—one of $5,000 on March 20, and one of $1,200 on March 31. Later, on May 6, another of $3,340 was discounted, and another of $3,475.

According to the records, Karnow's indebtedness to the bank has been fully paid.

NIMON KARNOW, called as plaintiff's second witness, testified on *direct examination* as follows:

Q. 1 (by Mr. Fisk). You have been sitting in court and heard Mr. O'Donnell's testimony? *A.* Yes.

Q. 2. Do you remember your giving Boston National Bank a note for $23,500, June 27–28, 1930? *A.* Yes.

Q. 3. Will you state what you did in connection with that transaction, state the circumstances of that transaction? *A.* I received a call from Thomas E. Greaney one morning and I went over to his office and he told me he wanted me to do him a favor and it will also be a favor to the bank, to go down to the bank and sign a note for $23,500, and when I get credit for it, to turn over the account to him. He said, "You will never be called upon to pay for that note or take care of it". He said, "Furthermore, I have some stock in the bank and I will give it to you as security". I told him I had no cash account in the bank and could not sign the note. He said, "Never mind, it is all arranged, just go down there and sign the note."

Q. 4. Did you give the bank security for the note? *A.* No, I told him I had no cash account in the bank and he said, "Never mind, it is all arranged. They will give you $23,000." So I went down to the bank and met Charles Ulin, and he gave me a note to sign for $23,500 and next day I received the credit and immediately issued a check to Thomas E. Greaney for like amount and brought it in to Thomas E. Greaney and the next day he told me to deposit it in the National Shawmut Bank for him in the branch on Harrison Avenue, which I did.

Q. 5. Did you pay the note? Was the note paid that you gave the bank? *A.* Yes. About a week or ten days later he gave me some shares in the bank to hold as security, so that the note had about two months to run, and so it ran along about two months. Two weeks before it was due, he told me, I will have to renew that note and told me I would not have to renew it any more, just this once. So we renewed the note and I paid the interest after renewal of same, and when this came due, I wasn't going to renew the note any more. The note was due, naturally you would be called for payment, but I wasn't to renew the note any more, and it was to be up to Thomas E. Greaney to get me my note back again. So he went with me to Charles Ulin of the Boston National and talked with him and as a result of the conversation he told me it was only a matter of a few days and I would get my note back again. I didn't get it and next week I went again with the same result. I didn't get it, and some time later I was in the Boston Continental Bank and was talking with

some official and had a conversation about the stock that I had as security and he advised me to put it in my name. And so I did, and after a while, I could not get my note back and went to Thomas Greaney again and finally got him to go to the Boston Bank and he went with me and when we came in I told them they charged me interest for the note, money I did not owe them. And he said, "That is all right, they will fix that up". We went to some official and they gave me credit for that interest back again, made some arrangements whereby I paid them off the note and they gave me back the note. They asked me for the shares and I gave them back the shares and that is all.

Q. 6. Did you say anything about the shares being transferred out of your name? *A.* Yes, I told you when I was talking in the bank some official advised me to transfer them to my name

Q. 7. I mean from your name to somebody else? *A.* I did not transfer anything.

Q. 8. Did you ask the bank to transfer them, or say anything to the bank about transferring them? *A.* I paid for the note and they asked me for the shares, that is all. They did not ask me who I transferred them to.

Q. 9. When Mr. Greaney turned the stock certificates over to you, there were three of them, I believe? *A.* I can't remember.

Q. 10. Do you remember whether his name was signed on the back, and you could have them transferred at the time you got them? *A.* Yes, I guess they were signed on the back.

Q. 11. And he turned them over to you as security for the money? *A.* Yes.

R. D. MAHONEY, called as a witness for the plaintiff, (36) testified that he had acquired no stock of Boston-Continental National Bank; had first become aware of the use of his name in this connection when he had been served as a defendant in this suit; that he had received no dividends; signed nothing; or in any other way been connected with any of these stock transactions; that what appears as his signature on the stock power on certificate 933 is not his signature; that he has neither authorized nor ratified any part of

these transactions; that his name was used wholly without his knowledge, authority or approval.

THOMAS E. GREANEY, called as a witness in his own behalf, (40) testified as follows:

Q. 1. How long were you connected with the Boston National Bank? *A.* I think about since 1922 or '23.

Q. 2. Were you a director from the beginning of your relations with the bank? *A.* Yes.

Q. 3. You have been or were continuously a director all the time up to the closing in '31? *A.* Yes.

Q. 4. I will ask you to come to the question of the transactions involved here and tell us first when the matters involved in this case were first brought to your attention. I am asking now of the time, about when? *A.* I think sometime around the summer of 1930.

Q. 5. Could you make it any closer than that? *A.* It was at the end of June or first of July.

Q. 6. Who first brought it to your attention? *A.* Mr. Ulin.

Q. 7. Mr. Charles Ulin? *A.* Yes.

Q. 8. At that time what was his position in the bank? *A.* President of the bank.

. . . . . .

Q. 9. Who was present at the time the conversation took place between you and Mr. Ulin? *A.* Just Mr. Ulin and myself.

Q. 10. Where did it take place? *A.* In my place of business.

Q. 11. Tell us what was said as fully as you can remember? *A.* Well, Mr. Ulin came in, I am not quite sure whether it was the morning or the afternoon, I think it was the morning, and said, "I am in a little bit of a jam". I says, "What is the matter"? He says, "The bank has been carrying some stock as a cash item on their books and the examiners are in the bank at the present time and I am going to get the stock out of there." I says, "What do you want me to do"? He says "I would like to have you suggest somebody that can substitute a note for the stock". As near as I can remember I said, "Why don't you get somebody"? He said, "I have tried to think of a man to help me out, but I can't seem to think of anyone I want to trust that way". I mentioned a few names and finally we hit upon

the name of Karnow. "How does he stand down there"? He says, "I think you have the right man". He telephoned to the bank to find out if Karnow owed anything and they told him he did not. I says, "You get in touch with Karnow and ask him if he will do the bank a favor and do you a favor at the same time". So he called Karnow on the phone, he explained to him what it was. He said the stock had been thrown back from somebody in Worcester and what he wanted Karnow to do was to substitute a note for the stock, and take over the stock and hold it for him and put a note in that would pass the examiners. He felt Karnow would be all right and he said "Send him down in the morning, but don't say too much to him. Everything will be all right. You tell him to sign the note and he will probably sign it. And I will give you the security for it which will be more than the note itself, so he won't take any chances." I got in touch with Karnow and told Karnow to go down to the bank, which he did and came back and told me everything was all right.

Q. 12. You have given us all the conversation that you had with Mr. Ulin? *A.* Yes, in substance.

Q. 13. You got in touch with Mr. Karnow? *A.* Yes.

Q. 14. How soon after you talked with Mr. Ulin? *A.* It was directly afterwards.

Q. 15. It was the same day? *A.* Yes.

Q. 16. Tell us what you had to say to Karnow? *A.* I asked him if he would do it and he said, "Yes", he would.

Q. 17. Do what? *A.* Do a favor for the bank. I said, "Mr. Ulin was in here and he wants you to do the bank a little favor. He has some stock down there that he wants you to take over. Karnow asked a few questions and I said, "I don't know all details, but if you will ask Mr. Ulin, when you get to the bank, he will explain it to you." He said, "I don't know. If you say it is all right for me, I will do it." I said, "You are not taking any chances, you are doing it for the bank. You are doing them a favor and they probably will do you a favor some time."

The Court. What was the next thing that happened after he left your place?

The Witness. The next thing seemed to be the following day. I saw Karnow. He came in and said, everything was all right, he signed a note down there and said, "They did not ask me any questions. I signed the note and they gave him credit for it".

Q. 18. Anything else? A. I don't think there is anything else that day.

Q. 19. Did you have any talk the following day, following Karnow's return, did you have talk with Mr. Ulin? A. Yes, I called up Mr. Ulin.

Q. 20. That second day? A. Yes, as near as I can remember.

Q. 21. Tell us the talk? A. He said Karnow was down there so everything is all right, everything handled all right.

Q. 22. Was there any other talk? A. Not at that time

Q. 23. Next thing was that you saw Karnow? A. Yes.

Q. 24. Tell us the talk then? A. I saw Karnow the following day and he came in with the credit slip and said, "I have a credit at the bank of $23,000 for that note I signed. What am I going to do with the money, it does not belong to me". I said, "Well, I will tell you. Mr. Ulin left instructions to have you deposit that check in my account and he would take it back into the Boston National again."

Q. 25. How did you get that instruction? A. I think I am a little ahead of my story. When I called Ulin and asked him about the Karnow affair, if Karnow's deal went through, the deal he wanted to put through, he said, "Yes". He said, "We credited him with the money and he will give the money to you and you turn it back to the bank."

Q. 26. So you just relayed that to Karnow? A. Yes.

Q. 27. Following that what was the next thing that occurred? A. Well, the next thing was, I think, that the bank sent down stock for $500 shares, something like that.

Q. 28. Before you reached that point, did you learn or in any way verify whether or not Mr. Karnow had deposited in your account? A. Yes, Karnow made the deposit himself.

Q. 29. How did you find out that he had done so? *A.* He brought me back a duplicate slip.

Q. 30. I would like to have you give the court every step of the thing, following your receipt of this deposit slip, what was the next thing that happened? Did the bank send down to get some stock? *A.* Yes, stock that was to be security for the note Karnow signed.

Q. 31. Sent the stock to whom? *A.* Well, they sent it to me.

Q. 32. To whom did stock run, to whom did the certificates run? *A.* I don't think I know what you mean.

Q. 33. Were the certificates to you, were they your certificates of stock? *A.* They were made out to me, yes.

Q. 34. Do you remember how many of them, and what they were? *A.* No, I don't, I think there were around 200 shares.

Q. 35. According to the evidence here it was 190 shares? *A.* 190 shares.

Q. 36. Would that be in accordance with your best recollection, if you have any about it? *A.* Yes.

Q. 37. How soon after Mr. Karnow got this credit, did you receive this stock? *A.* About the same time I think, probably same day.

Q. 38. What did you do with the stock? *A.* I signed the stock, as I remember it, to have it ready in case they were going to call for it.

Q. 39. That is, you endorsed it? *A.* Yes, signed the transfer.

Q. 40. To have it ready for what? *A.* The bank did not expect to hold it very long, they were going to dispose of it. They were not going to keep Karnow's note in there very long.

Q. 41. Then what next? You got the stock within a day or two after,— *A.* Yes, I think the stock came right along as soon as that note was signed.

Q. 42. You retained that stock in your own possession? *A.* Yes, I did.

Q. 43. What was the next thing? *A.* The next thing I can remember is that Karnow's note came due.

Q. 44. Do you remember how long that note itself was for? *A.* It was short, I think, thirty or sixty days.

The Court. Did you keep the stock?

The Witness. Yes, I kept the stock.

Q. 45. There has been some evidence there was a check delivered to you in payment of a dividend on this stock amounting to $358. and something over, does that correspond with your recollection? A. I did receive a dividend of $1.75 a share the stock was on a 7 percent basis.

Q. 46. At that time you owned some stock besides the lot that had been sent down to you? A. I had fifteen shares.

Q. 47. And the dividend check which you received included this 15 shares as well as the stock which you were holding on the loan? A. I think it did.

Q. 48. Upon the receipt of that dividend check, what if anything did you do? A. This stock of mine 190 shares was never put on record. They were not put into my assets at all. So when the bookkeeper got the check for $300, she asked me what it was and I saw that I was entitled to a check like that on 15 shares of stock and called up the bank and he said, "Well, we will have to leave the note with Karnow but you better turn that money over to Karnow and let him apply that to the interest on the note."

Q. 49. Giving this money to Karnow? A. Yes.

Q. 50. Did you send the check to Karnow or deliver it? A. Yes.

Q. 51. On or about the fifth or sixth of August? A. Well, after the dividend was paid. A few days later, I suppose.

Q. 52. For what amount? A. I don't remember, around $300, I think.

Mr. Gallagher. It was $332.50.

Q. 53. Would that be your recollection, around $332.50? A. Yes, I think that is about it.

Q. 54. How did you arrive at the amount of that check that you sent Karnow, whatever it was? A. The bookkeeper deducted the dividend that was due on 15 shares, and separated that. She credited that to my account and sent the balance to Karnow.

Q. 55. That was in August? *A.* First few days of August, yes. That was after the semi-annual dividends.

Q. 56. Mr. Ulin, I understand, told you how Karnow took that and applied it to the interest due on his note? *A.* Yes, he did.

Q. 57. That was in August? The first note as I understand the testimony was falling due around the 27th or 28th of August? *A.* Some time within that period.

Q. 58. Did you have any talk with Karnow at the time that you delivered the check or sent it to him? *A.* Yes, I did.

Q. 59. What was the talk? *A.* I told him that he was to take care of the interest on the note and the note would have to be renewed. He said he didn't like to do it.

Q. 60. Didn't like to do what? *A.* To renew the note, he didn't care to do it. I told him I had had a talk with Ulin and he would not have to carry it very long and I advised him to renew the note.

Q. 61. Did there come a time when that stock that you had been holding was put into the name of Karnow? *A.* Yes.

Q. 62. Did that occur before or after the first note fell due? *A.* I don't know.

Q. 63. Have you now any knowledge of what occurred at the time that stock was put into the name of Karnow so that you can tell us what it was? A. My recollection is that the stock was put into Karnow's name two or three months after he signed the first note.

Q. 64. Up until the time it was put in Karnow's name, it remained in your custody? *A.* Yes, it did.

Q. 65. I want to go back just a little in the order of time to the matter of that dividend check, which you testified you received on or about August 1st. I show you this paper and ask you what it is? *A.* My check made out to Mr. Karnow. [Received as Defendant's Exhibit A.]

Q. 66. Defendant's Exhibit A is check drawn on the First National Bank of Boston, dated August 5, 1930, check No. 245, payable to the order of N. Carno for $332.50, signed by,—is that your signature on the check Mr. Greaney? *A.* Yes.

Q. 67. It is endorsed N. Karnow, Karnow Bros. endorsement

shows it went through the Atlantic National Bank? Before the recess I think we spoke about the time the stock which you had held had been put into Karnow's name. At that time did you have anything to do with the delivery of the stock to Karnow, or the bank, or anything in connection with the transfer to Karnow's name? *A.* Yes, I turned the stock over to Karnow. I was holding the stock and Karnow asked for the stock and I asked Ulin if it was all right to give it to him and he said, "Yes, let him have it, that is his security."

Q. 68. You turned the whole thing over to him? *A.* Yes.

Q. 69. You think that was two or three months after Karnow had first given his note to the bank? *A.* I think so.

Q. 70. Following that, what was the next thing that happened? Let me ask you about the renewals of the note, were there further renewals? *A.* Yes, there was. My recollection was that Karnow got that stock after the second renewal of the note. When he renewed the note he asked for the stock. He said, "I renew the note and you are holding the security. Why can't I have that, I should have that in my possession." So I turned the stock over to him.

Q. 71. Was anybody present when you and Karnow had that talk about his having the stock? *A.* I don't think so, I don't remember anybody.

Q. 72. Are you sure that in any event you spoke to Ulin about it? *A.* Yes.

Q. 73. Do you know how many times that note was renewed, or how many times that original note was renewed? *A.* I think there were two or three renewals.

Q. 74. Was there anything said by anybody with regard to the renewal or objection to it in any way at the time of the second renewal? *A.* Only Karnow's objections, Karnow always objected.

Q. 75. To whom did he express his objection? *A.* He expressed it to me.

Q. 76. To anybody else? *A.* He and I went down to the bank and saw Mr. Ulin.

Q. 77. You went to the bank I suppose as a result of something

that transpired before you went to the bank, what was that? *A.* Karnow's insistence.

Q. 78. Karnow had gone to see you? *A.* Yes.

Q. 79. In substance, what was the talk? *A.* He said he did not want to go on that note any longer. He wanted to get through with it. It was only supposed to be for a short time and he would like to have Mr. Ulin get somebody else to substitute for him.

Q. 80. Was it as a result of that that you and Mr. Karnow went to see Mr. Ulin? *A.* Yes.

Q. 81. What took place then? *A.* Mr. Ulin said to him, "You are not taking any chances". He put him off.

Q. 82. At that time when that conversation took place had the stock been transferred to Karnow's name? *A.* I don't remember.

Q. 83. Go on from there, what was the next episode? *A.* I don't know what happened after that.

Q. 84. At some time did you come into possession of a series of notes? *A.* Yes.

Q. 85. Tell us about them? *A.* I received two notes for $9500 and one note for $5000 from Mr. Ulin.

Q. 86. Whose notes were they? *A.* Balter and Regan, or Regan & Balter.

Q. 87. What is Balter's first name and Regan's first name? *A.* Regan's first name was Edward and Balter's first name was Joseph.

Q. 88. Regan was at that time president of the bank was he? *A.* Yes.

Q. 89. And Mr. Balter a director of the bank? *A.* Yes.

Mr. Gallagher. Perhaps we can agree that at the time these $9500 notes were given, Mr. Regan was not then president. but became president subsequently.

Mr. Fisk. Mr. Regan was president after the reorganization, December 26, 1930, prior to that time Mr. Ulin had been president.

Q. 90. When these notes came into your possession, who gave them to you? *A.* Mr. Ulin gave them to me.

Q. 91. Was there anything said at the time? *A.* Why, yes. He said that Regan and Balter were going to buy the stock and when they paid the notes to deliver the stock to the bank.

Q. 92. Those notes were a series were they, $9500 coming due at different periods? A. Yes.

Q. 93. Were the $9500 notes in sequence or was the $5000 note between them on the due date? A. I don't remember.

Q. 94. When you got those notes what was said as to the future as to what you were to do with them? A. He told me to hold them and when the notes came due to send down the stock, enough stock to represent the notes.

Q. 95. Did you have the stock at that time, or was that after it had been transferred to Karnow? A. Karnow had the stock at that time.

Q. 96. And you had nothing? A. No, I didn't have anything.

Q. 97. Until you got these notes? A. That's right.

Q. 98. And then was it the arrangement that as they paid the notes a certain number of shares of stock corresponding to the amount of the note would be surrendered. To Balter and Regan? A. Yes.

Q. 99. In pursuance of that arrangement, what if anything occurred? A. Well, the first note came due and I notified Karnow to send down sufficient stock to the bank to take care of the note. The amount of the stock was represented by the size of the note.

Q. 100. That was one of the $9500 notes? A. Yes.

Q. 101. Did Karnow send down the stock? A. He did.

Q. 102. So far as you knew did he get credit for it on his note? A. I think he did.

Q. 103. What was the next episode? A. A little later —

The Court. When the $9500 notes or any portion of them were paid, who were they paid to?

The Witness. The bank.

The Court. You held the notes?

The Witness. Yes.

The Court. But payments were made to the bank?

The Witness. Yes.

The Court. What did you do with the notes then?

The Witness. I sent the note down to the bank to be paid and Karnow sent down an equal amount of stock.

Q. 104. Did any part of the money paid by Balter or Regan come to you? *A.* No.

Q. 105. Or, so far as you know, to Karnow? *A.* No.

Q. 106. After you surrendered that note for $9500 did you retain the other two notes? *A.* Yes.

Q. 107. For how long a time? *A.* Right up to the time the bank closed.

Q. 108. You had them then? *A.* Yes.

Q. 109. And no further payments made on account of those notes? *A.* No.

Q. 110. What did you do with the notes when the bank closed? *A.* I think shortly after, before the bank closed, when all the notes came due and it was not paid, Balter and Regan did not pay it, and I gave it to an attorney for collection.

Q. 111. Did he collect it? *A.* No, he merely collected the interest, I think.

Q. 112. Was there any arrangement whereby you turned that note over to the attorney for collection? *A.* Yes, the notes were to be made,— they were merely turned over.

Q. 113. I mean, was there any arrangement made with the bank, or anything by which you turned over that note for collection? *A.* I don't remember any.

Q. 114. The note became due, you sent it to the bank the day before it was due? *A.* Well, the bank notified me I had the note on ha and the bookkeeper knew the date that the note became due.

Q. 115. Coming back to the first note that was paid, when you sent that note down for payment, was it the day before? *A.* Probably the day before.

Q. 116. The day before it was due? *A.* Yes.

Q. 117. The second time you did not send that note to the bank? *A.* I think I did.

Q. 118. After it was overdue and unpaid did the bank send it back to you? *A.* Yes.

Q. 119. What did they say then? *A.* They said it was not paid, they merely returned it unpaid.

Q. 120. The note was payable to you? A. No, it was payable to Ulin.

Q. 121. And Ulin endorsed it to you? A. He endorsed it in blank.

Q. 122. After it was unpaid, he sent it back to you? A. I don't think Ulin was in the bank at that time.

Q. 123. Well, somebody sent it back to you? A. Yes.

Q. 124. What did they say to you then? A. They didn't say anything, just said it was unpaid.

Q. 125. They didn't tell you to get after Regan and Balter did they? A. No.

Q. 126. I show you this paper and ask you what it is? A. $9500 note signed by Balter and Regan.

[Received in evidence as Defendant's Exhibit B.]

. . . . . .

Mr. Gallagher. Note of Charles Ulin, $9500 payable to Charles Ulin, signed Edward M. Regan and J. Balter, payable January 10, 1932, and dated December 1, 1930, and the endorsement is "without recourse in any event, Charles Ulin".

Q. 127. As long as there may be some confusion about this matter, I want to go back just a bit with this witness. I want to go back with you to the time when you told us that Karnow was pressing to be taken off the note, wanted to get rid of the obligation. Now you and he and Ulin had a talk, at least one, on that subject? A. We did.

Q. 128. And as I understand it, the first one of those, and if I am in error, you correct me, the first one of those talks, as near as you can recall, was at the time the first renewal note was coming due? A. Yes.

Q. 129. He had demurred somewhat at the first renewal? A. Yes.

Q. 130. But when that renewal note came due, he again with a little more insistence urged that he be discharged of obligation on that note? A. Yes.

Q. 131. At that time, assuming that that would be some time in November of 1930? A. Yes, it would be about that time.

Q. 132. At that time, what was said by you, or Karnow with regard

to the renewal? *A.* Ulin promised Karnow that he would find somebody to take it off his hands.

Q. 133. At that time, you had not received these Balter-Regan notes? *A.* No.

Q. 134. Are you quite sure about that? *A.* I am not quite sure.

Q. 135. I don't mean to imply that you are in error if you say that you are not, because that is my own understanding. When the notes came into your possession, you had already surrendered the stock, as you told us? *A.* Yes.

Q. 136. And it had been transferred to Karnow's name? *A.* Yes.

Q. 137. When that first note of that series Balter-Regan notes came due, as I understand you now, you sent the note to the bank? *A.* Yes.

Q. 138. Seasonably before the due date? *A.* Yes.

Q. 139. For collection? *A.* Yes.

Q. 140. You got no receipt or token of receipt, you simply turned it over to the bank? *A.* That's right.

Q. 141. When were you called upon by the bank to surrender a block of stock corresponding to the $9500? *A.* At the time the note was paid. The same day, I think.

The Court. Do you know why the bank did not keep the Regan note and Balter note in addition to stock of Balter and Regan thereby relieving Mr. Karnow on this accommodation note?

The Witness. They didn't have the money to pay for it, I guess. He gave notes instead. The bank did not want to give him the stock until the notes were paid.

The Court. They had Karnow's notes, it was understood Karnow's notes would have to be collected?

The Witness. Yes.

The Court. They were just as well off with Balter and Regan's notes, weren't they? Notes running over a year?

The Witness. Well, now let's see.

The Court. Karnow was trying to get out of it, wasn't he?

The Witness. Yes.

The Court. When you got the Balter and Regan notes you had

a perfect opportunity to say to the bank, "Here relieve Karnow at least that much."

The Witness. Yes.

The Court. And keep Regan and Balter's notes?

The Witness. Yes.

The Court. Why didn't you do it?

The Witness. They did relieve Karnow of his notes.

The Court. After the notes were paid?

The Witness. The notes were never paid.

The Court. This second note if it had been paid: Karnow would not have got off with that liability until this note was paid, would he?

The Witness. Karnow was also liable when Balter and Regan gave the notes.

The Court. How was he?

The Witness. Well, at that time I think my note was substituted.

Q. 142. Let me ask you: Was this Balter-Regan transaction any part of the consolidation arrangement between the two banks? *A.* Yes, they wanted to acquire stock of the consolidated bank.

Q. 143. I don't quite get what you say? *A.* They wanted to acquire stock of the consolidated bank. They wanted to get some bank stock.

Q. 144. Regan and Balter? *A.* Yes.

The Court. Under this arrangement, this particular note had over a year to run?

The Witness. Yes.

The Court. They were not going to get the stock until the notes were paid?

The Witness. That's right.

Q. 145. This note that was put in as Defendant's Exhibit B was the last of the three to come due? *A.* I think it was.

Q. 146. What became of the $5000 note so far as you know? *A.* I think the $5000 note was the note that was defaulted.

Q. 147. Where did that land finally? You sent it to the bank, as I understood you to tell the court, for collection? *A.* Yes.

Q. 148. On or about the due date? *A.* Yes.

The Court. Was this the one he sent to the bank for collection?

Mr. Gallagher. No, it was the $5000 one.

The Witness. That could not be because the due date was so far away.

Q. 149. My question was: Where, so far as you know, did that $5000 note wind up, land? *A.* I think it came back to me as near as I can remember.

Q. 150. After the default? *A.* Yes.

Q. 151. Have you got it? *A.* No, I haven't got it now.

Q. 152. When you say you think it landed back with you, is that based on some recollection that you have, or are you merely guessing? *A.* I think I am guessing on that.

Q. 153. I will ask you this: Was there any conversation between Balter and Regan, Karnow and yourself with regard to substituting Balter and Regan for Karnow? *A.* Yes.

Q. 154. When as nearly as you can say, did the conversation take place? *A.* I can't tell you.

Q. 155. Then tell us as nearly as you can, what the substance of the conversation was? *A.* I think it was the conversation before that when the Karnow note was taken out of the bank and he surrendered the stock he was holding back to the bank.

Q. 156. Well, was it at that time, that there was a conversation between you four men with regard to Balter and Regan substituting for Karnow? *A.* I am not quite sure.

Q. 157. I understand you to say there was such a conversation? *A.* Yes.

Q. 158. And you have some difficulty in fixing the time of that conversation? *A.* Yes.

Q. 159. Laying aside for the moment the question of when it occurred, I will ask you to give us what the conversation was? *A.* Karnow and I went down to the bank for him to get rid of the note finally. It was agreed that he could not carry the note any longer.

Q. 160. Keep your mind on the question I am asking you. The substance of conversations is what I would like to give. *A.* I am a little hazy on that question.

Q. 161. Was there anything in that conversation about the consolidation of the two banks? *A.* I don't remember.

Q. 162. But there was a conversation, as I understand you to say, along those lines? *A.* Yes, we talked.

Q. 163. But what was said you don't recall?

Q. 164 (by the Court). Who was present? *A.* Balter was there, Regan, Karnow and myself.

Q. 165. Ulin? *A.* I don't think he was.

Q. 166. You don't remember any of the conversation? *A.* I remember that they were anxious to come in.

Q. 167. Do you remember the conversation? *A.* No, I can't remember it.

Q. 168 (by Mr. Gallagher). Let me ask you this: Before you put your note into the bank was there a consultation between you and Karnow and Regan and Ulin? *A.* Yes.

Q. 169 (by the Court). Do you say Ulin was there? *A.* Not Ulin.

Q. 170 (by Mr. Gallagher). Ulin has passed out of the picture at that time? *A.* Yes.

Q. 171. Regan had become president? *A.* Yes.

Q. 172. So that you and Karnow were at that time talking to Regan? *A.* Yes.

Q. 173. What about? *A.* About having Regan find somebody to take Karnow's note.

Q. 174. What was said in substance? *A.* I went down to the bank with Karnow and I told Regan "Karnow is in a fit about this thing. He has been on there a long time and wants to get out." He deposits in another bank and wants to get through with this. Regan says: "Yes, I know all about it, but I haven't got anybody to take it." Karnow said, "I can't carry it any longer." Regan said to me, "Why don't you take it?"

Q. 175. To you? *A.* Yes. I said I would rather not, I wish you would find somebody else, but Karnow was so anxious and I think he told me that he could get a line of credit in another bank if he didn't have to show that note in his statement, and I took the note.

I substituted my note for Karnow's and Karnow had the stock with him at that time, or went back and got the stock and turned it back.

Q. 176. That was some time before this series of notes of $9500 and $5000? *A.* Yes.

Q. 177. A considerable time before that? *A.* Quite a while, yes. That was the time my note went in in place of Karnow's.

Q. 178 (by the Court). You say now this substitution of Greaney for Karnow took place before the series of notes were given?

Mr. Gallagher. That is what the witness said. I thought it was otherwise.

The Court. You have asked him if it was before these notes were issued and he says it was.

Mr. Gallagher. Perhaps I may have unconsciously misled him. My understanding of the chronology was about the same as your Honor's.

Q. 179 (by Mr. Gallagher). What was the fact Mr. Greaney? *A.* The fact is that the stock was split and Karnow got the stock and the notes were sent to me.

Q. 180. What is the fact, did you have the notes at the time of this conversation that you have just described with Regan and Karnow, or didn't you? *A.* I don't think I had the notes there.

Q. 181. Is that your best recollection? *A.* Yes.

Q. 182. Was that $9500 payment made before or after you gave your note to the bank? *A.* That was made before.

Q. 183. Payment was made before you gave your note to the bank? *A.* Yes.

Q. 184. When that $9500 payment was made, I think you testified that you were holding that note and the two others of the series? *A.* That's right.

Q. 185. Have we got that nailed down now so that we can be sure about it according to your recollection? *A.* Yes, I think so.

Q. 186. What was the next thing in connection with this transaction that occurred? *A.* Well, I think that the due date of the note the fact that the $5000 note came due.

Q. 187. After you gave your note, what was done with the stock as far as you know? *A.* With the stock that Karnow returned?

Q. 188. Yes. *A.* The bank had the stock and they wanted to give it to me for security.

Q. 189. Did they give it to you for security? *A.* Yes.

Q. 190. Turned it over to you for security? *A.* Yes.

Q. 191. At or about the time that you gave your note for fourteen thousand and some odd dollars? *A.* Yes.

Q. 192. How long did you hold it? *A.* I held it right along.

Q. 193. Until the bank closed? *A.* Yes.

Q. 194. When that stock was delivered to you in whose name was it recorded? *A.* It was made out in my son-in-law's name.

Q. 195. Will you tell us how it came about that it was made in the name of your son-in-law? *A.* Yes, when the stock was ready they asked me what name to put it in. They made the transfer at that time I saw either Mr. Strobel or Mr. Regan.

[Adjournment from November 10, 1937, to a later date.]

THOMAS E. GREANEY, testifying further in his own behalf, said as follows:

Q. 196 (by Mr. Gallagher). Since the last hearing on this matter, have you had an opportunity to look over the stenographic notes of the testimony which you gave? *A.* I have.

Q. 197. Do you find in those notes some matters which you testified to that you wish to amend or correct? *A.* There are some. Yes.

Q. 198. I am going to ask you some questions about the matter of the Regan Balter notes with the idea that your testimony as to that matter completely now will automatically correct the points in which the testimony previously given, you say, was erroneous. When did you first hear or learn about the plan of Regan and Balter to purchase stock in the bank? *A.* At a meeting held in my house.

Q. 199. About when? *A.* About August or September, 1930.

Q. 200. Who first spoke to you about that matter? *A.* Mr. Balter.

Q. 201. Tell the court what Mr. Balter said to you about it as fully as you can remember it. *A.* Mr. Balter called me at my office and said, "You know I am a director in the Continental National Bank and we have a president down there, a fellow by the name of Regan, and both of us are interested in securing Boston National Bank stock

for the purpose of consolidation." He said, "I think it would be a very good idea if the two banks were consolidated. What do you think about it?" I said, "I haven't got much to say about it. Why don't you speak to Mr. Ulin about it?" He said, "Why don't you speak to him? I am not very friendly with him. Mr. Regan does not know him at all. So I wish you would make an appointment with us to meet Mr. Ulin, so we can go over the matter."

Q. 202. Did you do anything in consequence of that request? *A.* Yes. I saw Mr. Ulin and told him what Mr. Balter told me, and he said, "I would be willing. I will talk with them."

Q. 203. There was a meeting, wasn't there? *A.* Yes.

Q. 204. Where did it take place? *A.* In my house.

Q. 205. Who was present? *A.* Regan, Balter, Ulin and myself

Q. 206. State what occurred at that meeting in as orderly and complete a way as you can give it to us? *A.* Well, we sat down, and I said to Mr. Ulin, "I explained to you why these gentlemen are here." He said, "Yes. Are you interested in buying some stock? Are you thinking of consolidation?" They said, "Yes." He said, "How much stock would you buy?" They said, "Well, we will take five thousand shares. We would like to get sufficient shares to control the thing." He said, "What is your notion of a price?" They said, "On a large block like that we would not want to pay over one hundred twenty-five dollars a share." He said, "That is ridiculous. The bank's stock is worth a great deal more than that. I would not consider less than two hundred." They figured around and finally decided on one hundred fifty dollars a share. Mr. Ulin agreed to sell them stock at one hundred fifty dollars a share.

Q. 207. Was there anything further which was said as to the stock, and their purchase of it, as to how they were going to pay for it, what was the amount, if you can give it any more definitely than you have? *A.* As an evidence of good faith he asked them to put up a check, and they said during the week they would give us a certified check for that amount.

Q. 208. Was there anything that you recall them saying, how it was to be paid for? *A.* They said they would pay for it in cash.

Q. 209. How long did that meeting last? *A.* Two or three hours.

Q. 210. Subsequent to that meeting, the following day, I want you to tell the court the incidents in their order as they occurred, in connection with the matter. A. Well, during the following week, on a telephone message from Mr. Balter to come down to the Continental National Bank, he came down, and said, "I have got that binder check ready for you." Check to bind the bargain. And he gave me a certified check for fifty thousand dollars, made out to me. That check was to be held, I was to hold the check until delivery was consummated, and that was to be applied on the price of the shares.

Q. 211. Whose check was that? A. That was, as I remember it, the Continental National Bank check.

Q. 212. You took the check? A. Yes, I did.

Q. 213. Under a special arrangement, you were to hold it until the thing was carried through? A. That's right.

Q. 214. And then it was to be applied to the purchase of the nine hundred shares of stock or thereabouts? A. Yes.

Q. 215. Subsequent to that, what happened? A. They started negotiations with the Comptroller, and an examiner was to close the consolidation of the two banks. So he told them they would have to go to Washington, and Mr. Ulin advised me to be ready. He said, "We are going to send down a committee of the bank to go to Washington", and to be ready when the time came to go down and see the Comptroller, and I did get a call later on.

Q. 216. And you went? A. I went. Yes.

Q. 217. What transpired at the Washington meeting? A. There was a committee of directors from the Continental and from the Boston National Bank, and we had an appointment with the Comptroller and he had the statements of the banks, and we sat down and he said, "Well, the structure of that Continental has got to be strengthened before I will consent to a consolidation. There are some loans I don't like and I don't think the bank is quite strong enough. It has to be propped up a bit." They asked him what he expected them to do, and he said, "Well, it will take two hundred thousand dollars to put that bank in shape. You can do that, and I will consent to the consolidation."

Q. 218. Was that in substance the upshot of that meeting? A.

Yes. He said further "I expect you to find a committee from each bank to examine the other bank's loans to see if they are satisfactory, and if it is not satisfactory, I want to report it."

Q. 219. Subsequent to that, what was the next thing that followed? *A.* The next thing that followed, Ulin called me up one day and said, "These fellows will not pay cash for the stock they wish to buy. They made me a proposition for me to take notes." I said "What is the reason?" He said, "Well, they haven't got any cash. The money that they intended to use to buy the bank stock, they have got to use to fix up the Continental."

Q. 220. Thus far you had the fifty thousand dollars, which you were holding the check for? *A.* No. They needed all that money that they agreed to use to buy bank stock, the fifty thousand dollars.

Q. 221. Anything else? *A.* And he said they needed the fifty thousand dollars, too.

Q. 222. What happened subsequent to that or in consequence of it? *A.* Well, I returned the check to the bank. I gave the check to Mr. Ulin, I am quite sure, but I gave it up. Mr. Ulin was to handle the whole thing.

Q. 223. What was the next thing? *A.* The next was for Ulin to send me down twenty four thousand dollars worth of Regan and Balter notes.

Q. 224. Was there any talk about that? *A.* Yes, he said, "These notes,—Karnow is after you and he is after me to get his note out of the bank. These notes will take care of Karnow's note. Send them down to take care of Karnow's note." That is the way he put it.

Q. 225. What is the amount of those notes to date? *A.* One $9500, one $5000 and another $9500; total $24,000.

Q. 226. About when did you get those notes? *A.* I got those notes in December, I think, 1930.

Q. 227. And one of them was the note that we had here that was put in as an exhibit the other day? *A.* Yes, sir.

Q. 228. I am showing you defendant's Exhibit "B". That was one of the notes, was it? *A.* Yes.

Q. 229. Did you learn how many notes had been given by Regan and Balter to take over this stock? How many promissory notes?

The detail about them, anything about them? *A.* They gave Ulin a whole stack of notes.

Q. 230. Coming due when? *A.* At different times, thirty days apart.

Q. 231. Were they coming due on the same day every month? *A.* My recollection is, I am quite sure, they were due on the tenth of every month; tenth of each month.

Q. 232. You received in December some three notes aggregating $24,000? *A.* Yes, I did.

Q. 233. On the arrangement, did you have any definite idea as to how many shares of stock those notes would take care of? *A.* Well, each note would take care of an equivalent amount of stock at the rate of one hundred fifty dollars a share according to the bargain.

Q. 234. Was there anything said as to what was to be done with the notes or with the stock, as these notes were collected? *A.* Karnow at that time held the stock, and I was to get stock from Karnow, a sufficient amount of stock to offset the notes as they became due.

Q. 235. When the first note came due, it was paid, wasn't it? *A.* Yes, it was.

Q. 236. Tell the court just what part you had in that and how it was done, as far as you know? *A.* I had a record of when the note came due, and I wrote Mr. Karnow. I was away at the time. I wrote him to send down the amount of stock, $9500 worth of stock.

Q. 237. At what rate? *A.* At the rate of $150 a share; and to go to my office and get a $9500 note and cash the two and bring them down to the note teller's window and they would take care of it.

Q. 238. That was done? *A.* Yes.

Q. 239. What happened to the Karnow note with reference to that transaction? *A.* The Karnow note was credited with the $9500 paid by Balter and Regan.

Q. 240. Do you know how that payment was handled? *A.* I don't know.

Q. 241. Mr. Karnow surrendered the stock? *A.* Yes.

Q. 242. What did he receive for it? *A.* He received a credit slip I think.

Q. 243. Wasn't it a check? *A.* It might have been a check.

Q. 244. Whatever it was, he got credit on the note? *A.* Yes.

Q. 245. You were down in Florida at the time? *A.* Yes.

Q. 246. Following that, with regard to these notes, what was the next thing that happened? *A.* There was a renewal. The next thing that happened—

Q. 247. We are now in January, was it; that first demand came? *A.* No. It came in March, I think. March, 1931.

Q. 248. In the meantime, back in August Karnow had given a renewal of his original note? *A.* Yes, he had.

Q. 249. And that renewed note fell due in three months as you recall it? *A.* Yes.

Q. 250. The testimony shows; that would be in November? *A.* Yes.

Q. 251. When he gave another note, did he? *A.* Yes, he gave another note.

Q. 252. Coming to the second one of these Regan and Balter notes, tell us about that. *A.* The second Regan and Balter note was a five thousand dollar note. It came due in September, 1931. That note wasn't paid.

Q. 253. Tell us what occurred. What you had to do about it or with it? *A.* Previous to that Karnow had returned some time in May; this note of Karnow's, I mean this $9500 was paid in March.

Q. 254. Yes. *A.* Karnow and I went down and saw Regan and we said to him "Now Karnow's note has been reduced by $9500, but he still wants to get through with it. He wants to be released on the note. He does not want to carry it any longer. He would like to have you find somebody else." Karnow said, "Yes, I would. I don't want to be on that note. I have been on there quite a while and I want to get through with it." Regan said "Well, we will find somebody to take your place. We will get somebody. Just have a little more patience." I think that was in April. Shortly after that it was anyway. And I used to meet Karnow quite frequently on the street, and every time I would see him he would say, "What are they going to do with me down there. I want to get off the note. I am not in the bank." I said, "Well, we will go down once more anyway". He said to me, "I am in another bank now, and I can get

accommodation there and I need some money for my season, and I can borrow some money; but if I show that note in my statement they will not give me a line of credit. I will have to disclose the note in my statement, but I can't explain to them what it is. It has come to the time I have got to get out of it." We explained that to Mr. Regan. Regan said, "I haven't a substitute for it now. I don't know who to put on there. He says, "Why don't you take it?"

Q. 255. Was this the second visit to Regan? *A.* Yes. That was the next visit. I says, "I don't want to take it. I don't want to sign a note for a thing like that." He said, "Well you sign a short note, one for about thirty days." And I said, "Can you make it fifteen days." He said, "No, I want to make it thirty days to have a little breathing space to get hold of somebody", and I signed the note for thirty days. That was in May I am quite sure and Karnow sent the the stock he was holding down to the bank. Mr. Regan said to me, "You hold that stock same as Mr. Karnow has. You have the stock. You hold it the same way Karnow did, and we will probably get another man."

Q. 256. Go on from there. *A.* A little while after that the cashier of the bank telephoned to me, fellow by the name of Strobel, and said, "We have got that stock down here that Mr. Karnow sent down. Whose name do you want it put in?" I said, "I don't know. It is up to the bank, isn't it?" He said, "No. Don't you know anybody?" I says "no". "Well", he said, "I don't know. Can you give me a name?" I said, "No, not off hand." He said, "Why don't you come down and see Mr. Regan?" I went down and saw Regan and said to him, "I just received a call from Mr. Strobel and he asked me to find a name to put the stock in." So Mr. Regan thought for a minute and said, "I don't know. You have got to have somebody satisfactory to us, and he ought to be satisfactory to you too. You are the middle man here. You are holding the stock." I said, "Can you suggest anyone?" And he said, "Well, no, I can't off hand. Can you think of somebody?" I said, "Well, I have a son-in-law. Perhaps we could put it in his name." He said, "That will be all right", and asked me what his name was. And I gave it to him.

Q. 257. What name did you give him? *A.* Roland D. Mahoney.

Q. 258. He is your son-in-law? *A.* Yes.

Q. 259. In consequence of that what happened? *A.* The stock was made out in that name and sent to me.

Q. 260. Go along from there, which you say was sometime in May. *A.* Yes. My note became due in June. I gave you a short note to give him a chance to get somebody. My note came due and I went down and saw him again and I said, "Have you got somebody? I don't want to renew that note." And he said, "No, I haven't, but I don't see why you have to worry over it. You are holding those Balter-Regan notes and have the stock for security," and I said, "That is not the idea. I don't want to have a note in the bank". I owed the bank some more money. I had another small note in the bank and didn't want this one to show. So he said, "Well, I will get somebody." He said, "You will have to sign another note. Give me time enough this time; make the note a little longer, and I will get you out of it." That was in June, I am quite sure, and I did sign a note. I think it was sixty days.

Q. 261. June, 1931? *A.* Yes.

Q. 262. Go on from there? *A.* That note came due and there still wasn't anybody. So I signed another note. We had the same kind of a talk over again. And when his notes were going to be paid, Regan-Balter notes, and that stock was going to be taken out. So I saw my way out and signed another note to come due in November. In September, when that five thousand dollar note came due, we figured it out in my office and we found that we had at September about 120 shares, something like that, somewhere in the vicinity of 120 shares to take care of the September 10 note, the Regan and Balter five thousand dollar note. The stock had been split. So it was in a little different position from what it was. It figured $150 a share, but it did not figure the same amount of shares. They reckoned it to be at the rate of $150 a share and I looked over the certificates and found a certificate for one hundred shares, and another one for fifty-seven shares. I had to get one hundred twenty odd to take care of the note, and I sent the fifty-seven shares down to the bank.

Q. 263. There was one certificate? *A.* One certificate for fifty-seven shares and I sent that down to the bank to settle up the interest; the one hundred share certificate had already been attached to the note when it went to the bank. In the meantime, that was done on the date the note came due, on the 10th day of September. I was down that way and went into the bank and saw Mr. Regan, and he said, "Your note is coming due this afternoon." I says, "I have got that stock ready for you." He says, "Gee! we can't pay that note. We are not in a position to do it now. Balter is short of money and I can't handle it. I have got to have an extension on it." I said, "Well, then there is no use sending the stock down. There is no sense in my sending the note down as far as that goes." He said, "No, we can't pay it. We want more time on it." I said, "How much time do you want on it?" He said, "Probably a month or two. We will be able to take care of it then."

Q. 264. In the meantime, right in that period there, what further did you hear from your fifty-seven share certificate of stock that you had sent to be divided? *A.* The bank sent it back.

Q. 265. I am showing you two certificates numbered, respectively, 1085 and 1086, and ask you if those are the certificates that they sent back to you in exchange for your certificate for fifty-seven shares? *A.* They look like the same certificates.

Q. 266. There is no question about it? *A.* There cannot be.

[These two certificates, 1085 and 1086, received as "Defendant's Exhibit C".]

The Court. What was the split of stock, the ratio of re-issued stock in the consolidation?

Mr. Gallagher. 3.6

Q. 267. I show you certificate No. 929 Boston Continental National Bank and ask you if that is the certificate for 100 shares which you say you endorsed? *A.* Yes, that is it.

[Certificate 929 received in evidence as "Defendant's Exhibit D".]

268. Going on from the point where you say Mr. Regan told you that the note would not be paid. *A.* Yes.

Q. 269. What, if anything, did you do in consequence of that information? *A.* I didn't send down the stock. I didn't have the twenty shares endorsed. I would not bother with it any more.

Q. 270. What did you do about the note, if anything? *A.* I held that note.

Q. 271. Did you take any action on it at all? *A.* I did not at that time.

Q. 272. What did you do finally on the note? *A.* Finally I gave the note over to an attorney for collection.

Q. 273. About when? Do you remember? *A.* I think it was in November. He had not paid anything, and I think that was in November.

Q. 274. Did he collect anything for you? *A.* He collected five hundred dollars.

Q. 275. On account? *A.* Yes.

Q. 276. And you received the five hundred dollars? *A.* Yes, I did.

Q. 277. What did you do with it or about it? *A.* He gave me the five hundred dollars and I went down and saw Mr. Regan again. He said, "I can't give you any stock for this five hundred dollars." I said, "What do want me to do with it?" He said, "I will tell you. You have been paying the interest on your note, haven't you?" I said, "Yes, I have." He said, "Why don't you apply that to the interest? The bank is going to adjust this all out pretty soon, and I am going to take those shares anyway. I am going to take the rest of them." And I said, - I was always kicking about the interest, you know.

Q. 278. Yes. Did your attorney succeed in getting anything in satisfaction of the demand besides the five hundred dollar payment? *A.* Yes, he did. He got some extra security.

Q. 279. What was that security? *A.* That was consolidated stock. Stock of the two banks.

Q. 280. I show you certificates of the Boston National Bank numbered, respectively, 147 and 148 and ask you if those are the certificates that you received as an additional security? *A.* Yes. They were made out to Ruth Dennis. I remember the name.

[Certificates 147 and 148 received in evidence as "Defendant's Exhibit E".]

Q. 281. After that were there any other further transactions with regard to the payment of these Balter-Regan notes? *A.* No, there were not.

Q. 282. The bank had closed at that time? *A.* The bank closed shortly after that.

Q. 283. What was the next thing that you had occasion to do or say with regard to your own note in the bank? *A.* I had renewed my own note in November, I think it was. That was not due at the time the bank closed.

Q. 284. Did you hear something further about it? *A.* About my note?

Q. 285. Was there any demand made upon you for it at any time? *A.* After the closing of the bank?

Q. 286. Yes. *A.* I don't think there was.

Q. 287. What was the next thing you heard about your situation there? *A.* Next thing I heard was the stock assessment.

Q. 288. Tell us about that. *A.* I received notice through registered mail of an assessment on my stock. Then a letter came in addressed to R. D. Mahoney, and that was also, I believe, on the assessment.

Q. 289. What did you do in consequence? *A.* I went down to see the Receiver then. His name was Cunningham, and I started to explain. I told him, "The note I have at the bank, my own legitimate notes, are going to be paid. My own stock assessment is going to be paid. I am going to pay the bank", and I started to explain about the other transaction, the note that started with Mr. Karnow and extended through me, and he said, "I don't want you to do anything like that. There have been a lot of irregular things going on at this bank. If I find anything wrong here I am going to have all you fellows up at the District Attorney's office." I don't remember anything more about it.

Q. 290. What was the next thing? *A.* The next thing I did was to speak to Mr. Lourie about it. He is sort of a business adviser.

Q. 291. After that? *A.* He wrote a letter to the next receiver, the new receiver.

Q. 292. Mr. Cunningham having died? *A.* Yes.

Q. 293. Who was appointed in his place? *A.* Mr. Brennan.

Q. 294. What, if anything, did you do after Mr. Brennan came in? *A.* We wrote a letter to Mr. Brennan and he wrote us back and said he wanted to have a conference with us about this.

Q. 295. Yes. *A.* We went down to see Mr. Brennan and we explained to him the whole story, started at the beginning and told him the whole thing all the way through and he said "It looks to me like you are out'. They can't hold you on that. I am going to recommend to Washington that that is my opinion."

Q. 296. Did you present the evidence to Mr. Brennan, in substance, everything that you have told here to the court? *A.* Yes, I did.

Q. 297. And the conversation, as I understand it, that you had with Mr. Brennan, was supplementary to the letter that you had previously sent to him relating to this matter? *A.* Yes.

Q. 298. There is one further thing in connection with this arrangement. What, if anything, was said as to what was to be done with, or become of the surplus stock left over in your hands after these notes had been met or taken care of? *A.* There was a small surplus; there was a surplus of a few shares that were to be returned to the bank after the next Regan note was taken care of. The bank had to work that out somehow.

Q. 299. Was that a matter of arrangement between you and somebody else? *A.* That was a matter of arrangement between Mr. Ulin and myself. Karnow's notes were accumulating interest, and the bank was adding interest to Karnow's notes. They would have to wash that out somehow; so he said he would get rid of it, and clear it up through some of the surplus shares.

Q. 300. I want to ask you, having in mind your testimony here of some days ago, was there any conversation between you and Balter and Regan and Ulin and Karnow about the substitution of Balter-Regan notes for the Karnow notes? *A.* No, there was not.

Q. 301. You appreciate and realize that you testified to that effect

when you were on the stand? *A.* Yes, I did. I don't think I quite understood. There was no such conversation.

Q. 302. At any stage did you and Karnow talk to Balter? *A.* Yes, we did.

Q. 303. Tell us what the conversation was. *A.* Mr. Karnow and I,—as I said before, every time I saw Karnow he would nag me about getting off the note. So I said, "Well, perhaps Balter can do something for us. Ulin has not done anything. Let's see what we can do with Balter." He and I went down to Balter's office and Balter said, "I guess I can get som body for you", and he did not get anybody. He promised to get somebody, but never did. We did not hear anything more about it. I called up Balter and said, "Have you done anything about that Karnow matter I asked about?" He said, "No, I can't find anybody to do that job. You better see Regan."

Q. 304. Can you tell us about when it was this talk took place between you, Balter and Karnow? *A.* That was shortly after the consolidation of the two banks.

Q. 305. That took place when? *A.* Sometime in January, 1931.

Mr. Gallagher. Unless I have overlooked something, your Honor, that is all.

Cross Examination.

X *Q.* 306 (by Mr. Aldridge). Mr. Greaney, I believe you testified you endorsed that stock? *A.* Yes.

X-Q. 307. You endorsed the name of R. D. Mahoney on it? *A.* Yes.

X-Q. 308. On certificate No. 929 for 100 shares of stock? *A.* I did.

X-Q. 309. On this certificate for fifty-seven shares, did you endorse that? *A.* The one that was split?

X-Q. 310. Yes. *A.* Yes, sir.

X-Q. 311. That was in the name of R. D. Mahoney? *A.* Yes, sir.

X-Q. 312. Did you make affidavit on May 22, 1934, with reference to the facts in this case? *A* I don't remember.

X-Q. 313. Do you know Edward Spencer? *A.* Yes.

X-Q. 314. Do you recall making an affidavit? *A.* Is this the affidavit?

X-Q. 315. Yes. A. Yes, I made that.

X-Q. 316. That is an affidavit made by you on May 21, 1934? A. I don't remember the date. That is evidently right.

X-Q. 317. Did that affidavit state the facts as you knew them at the time that you made it? A. I think it must have.

X-Q. 318. You would not make an affidavit of anything different, would you? A. No, I don't believe I would.

X-Q. 319. As stated in the affidavit, the facts were true? A. At that time.

X-Q. 320. And are now true? A. Well, I think I told the truth.

[Affidavit received in evidence as "Plaintiff's Exhibit 38".]

X-Q. 321. You testified that you got five hundred dollars from your counsel? From whom? A. From Regan and Balter.

X-Q. 322. And you kept the five hundred dollars yourself? A. Yes.

X-Q. 323. You also got additional collateral security of 150 shares Boston Continental Bank stock? A. Yes.

X-Q. 324. And you kept those, did you not? A. Yes.

X-Q. 325. Did you state Mr. Ulin had advised you that they had a number of shares of stock coming in on a draft from a Worcester bank? A. He did not put it that way.

X-Q. 326. How did he put it? A. He said they had a number of shares they were carrying in the bank as a cash item. He said they were thrown back on him from Worcester.

X-Q. 327. And that the National Bank Examiner was coming around to make an examination? A. He said they were in the bank at the time.

X-Q. 328. And they wanted to get them out? A. He wanted to get them out. Yes.

X-Q. 329. And he asked you to get them out for him? A. He asked me to help him out of the trouble; yes.

X-Q. 330. You were a director of the bank at that time? A. Yes.

X-Q. 331. Was that concealed from the National Bank Examiner? Did you ever disclose it to him? A. I never did.

X-Q. 332. Did you sign the statement which was forwarded to the

Comptroller of the Currency as one of the directors of the bank? Required by the National Banking Act. *A.* I don't remember.

Mr. Aldridge. If your Honor please, that will finish with Mr. Greaney for us. We want to ask the National Bank Examiner for a copy of that and we can get it in a few minutes.

Redirect Examination.

Q. 333 (by Mr. Gallagher). About this affidavit which Mr. Aldridge showed you, who prepared that affidavit? *A.* The attorney that I had at that time.

Q. 334. What was his name? *A.* James Yoffa.

Q. 335. Who else, if anybody, took part in the preparation of that affidavit? *A.* Mr. Lourie.

Q. 336. What is his relation to you? *A.* He is business counsellor.

Q. 337. And has been acting in that capacity to you for some time? *A.* Yes; a great many years.

Q. 338. Is Yoffa the attorney who collected the five hundred dollars on Regan-Balter note? *A.* Yes.

Q. 339. The same man? *A.* Yes.

Q. 340. And who received this Dennis trustee stock that has been put in evidence? *A.* Yes. Yoffa got that.

Q. 341. Had you told Mr. Lourie about the receipt of the five hundred dollars and the stock? *A.* Oh, yes. He knew all about it. He collected it.

Q. 342. Mr. Lourie, I say. *A.* Mr. Lourie knew all about that. Yes, I suppose so.

Q. 343. About that five thousand dollar note, I omitted to ask you, what has become of that? Do you know? *A.* The attorney had it originally and sent it back to me, and I suppose it is around somewhere. I haven't got it now.

Q. 344. Have you made a search for it and tried to find it? *A.* Yes. I have been unable to find it. I could not seem to locate it.

Q. 345 (by Mr. Stone). With the exception of the statement which you made to Mr. Karnow at the time when you asked him to go to the bank and sign a note, did you disclose any facts that you have disclosed today in connection with this transaction, to Karnow? *A.* No.

Q. 346. Did you ever disclose it to him? *A.* Not very many. I never said much to Mr. Karnow about it.

Q. 347. When Mr. Karnow accompanied you and you would go to Mr. Balter or to Mr. Regan, as you testified to, did you tell him then more than what you told him originally, viz. that the signing of the note would be an accommodation to you and also a favor to the bank? *A.* I told him that. Yes.

Q. 348. The conversations that you had with Balter and Regan regarding taking up of the Karnow note; who did all the talking, you or Karnow? *A.* Well, we both talked. But I talked more than Karnow on this case.

Q. 349. With the exception of Karnow's statement that he wants to go off the note and with the exception that you told him you would get some one that would help him out of this thing, did Karnow make any suggestions to you to take him into your confidence as to what you were going to do? *A.* No. He did not.

Q. 350 (by Mr. Gallagher). I take it from what you say that you did not inform Karnow about the Regan-Balter note transactions? *A.* About them buying the interest in the consolidation?

Q. 351. Yes. *A.* No. I never said anything about that to Karnow.

Q. 352. Or about your having some of the Regan and Balter notes? You never told him that? *A.* No. He knew I had one. That went with the note from my office when he took down the stock with him.

ALDRIDGE & FISK,
BRENTON K. FISK,
Attorneys for the Plaintiff-Appellee,
44 School Street, Boston, Mass.

COMMONWEALTH OF MASSACHUSETTS,
SUFFOLK, ss.

Before me, a notary public in and for said Commonwealth, personally appeared Brenton K. Fisk, who is known to me and who, being by me first duly sworn, states under oath that he has served on the defendant-appellant the foregoing statement of additional testimony by duly mailing a copy thereof to his attorney-of-record, Daniel J. Gallagher, at 209 Washington Street, Boston, Massachusetts, the attorney's last known address. BRENTON K. FISK.

Subscribed in my presence and sworn to before me on this sixth day of October, 1938. ANNE M. CASHIN,
Notary Public.

EXHIBITS.

PLAINTIFF'S EXHIBIT 1.

Dec-12-1936 A. A. S.

Cunningham's Appointment (Adjudication of Insolvency)
Treasury Department

No. 11903

Office of Comptroller of the Currency
Washington, D. C., December 22, 1931.

Whereas, From information on file in this bureau, I am satisfied that "The Boston-Continental National Bank," located in the City of Boston, County of Suffolk, and State of Massachusetts is insolvent and unable to pay its just and legal debts:

Now, therefore, I, F. G. Awalt, Acting Comptroller of the Currency, in pursuance of the power and authority vested in me by law and under the provisions of Section 1 of an Act of Congress entitled "An Act authorizing the appointment of Receivers of National Banks, and for other purposes," approved June 30, 1876, do hereby appoint John B. Cunningham Receiver of "The Boston-Continental National Bank of ," with all the powers, duties, and responsibilities given to or imposed upon a Receiver under the provisions of the Revised Statutes of the United States which authorize the appointment of a Receiver.

In witness whereof, I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the City of Washington, in the District of Columbia, this twenty-second day of December, A. D. 1931.

F. G. AWALT,
(SEAL) Acting Comptroller of the Currency.

PLAINTIFF'S EXHIBIT 3.

Deitrick's Appointment.

Treasury Department

No. 11903

Office of the Comptroller of the Currency

Washington, D. C., September 21, 1934.

Whereas, James H. Brennan was duly appointed and commissioned Receiver of "Boston-Continental National Bank", located in the City of Boston, County of Suffolk and State of Massachusetts on the fifteenth day of September, 1933, and whereas the said James H. Brennan has resigned to take effect at the close of business September 29, 1934.

Now, Therefore, I, J. F. T. O'Connor, Comptroller of the Currency, do hereby appoint Frederick S. Deitrick Receiver of "Boston Continental National Bank" to take effect at the close of business on the twenty-ninth day of September, 1934, in place of the said James H. Brennan, with all the powers, duties, and responsibilities given to or imposed upon a Receiver under the provisions of the Revised Statutes of the United States which authorize the appointment of a Receiver.

In Witness Whereof, I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the City of Washington, in the District of Columbia, this twenty-first day of September, A. D., 1934.

J. F. T. O'CONNOR,

[SEAL] Comptroller of the Currency.

PLAINTIFF'S EXHIBIT 4.

Form 1924. MWF A

CERTIFICATE APPROVING CONSOLIDATION

Charter No. 11903 Consol. No. 423.

Treasury Department

Office of the Comptroller of the Currency

Washington, D. C., December 26, 1930.

Whereas, by satisfactory evidence presented to the undersigned, it has been made to appear that the directors and shareholders of The

Boston National Bank located in the City of Boston, in the County of Suffolk and State of Massachusetts, and the directors and shareholders of Continental National Bank of Boston located in the City of Boston, in the County of Suffolk and State of Massachusetts, have complied with all the provisions of an Act of Congress, entitled: "An Act to provide for the consolidation of National Banking Associations", approved November 7, 1918, as amended February 25, 1927.

Now, Therefore, I, J. W. Pole, Comptroller of the Currency, do hereby certify that The Boston National Bank and Continental National Bank of Boston have been consolidated under the charter of The Boston National Bank and under the corporate title of "Boston-Continental National Bank" with capital stock of One Million Dollars ($1,000,000) and that the consolidation is hereby approved. On the date of consolidation, the consolidated bank has one (1) branch, located in the City of Boston, which was a branch of The Boston National Bank and Which was in lawful operation on February 25, 1927.

In testimony Whereof, witness my hand and Seal of Office this twenty-sixth day of December, 1930.

J. W. POLE,
Comptroller of the Currency.

[SEAL].

PLAINTIFF'S EXHIBIT 5.

AGREEMENT OF CONSOLIDATION

This Agreement made between The Boston National Bank, a banking association organized under the laws of the United States, with capital stock of six hundred and twenty-five thousand dollars ($625,000.00) divided into 6,250 shares of one hundred dollars ($100.00) each, and Continental National Bank of Boston, a banking association organized under the laws of the United States, with capital stock of five hundred thousand dollars ($500,000.00) divided into 5,000 shares of one hundred dollars ($100.00) each, each located in the City of Boston, State of Massachusetts, and each acting pursuant to a resolution of its Board of Directors and by a majority of said Boards, pursuant to the authority given by, and in accordance with the provisions of, an Act of the Congress of the

United States entitled "An Act to provide for the consolidation of National Banking Associations", approved on the 7th day of November, 1918, witnesseth as follows:

Section 4.

Of the capital of the consolidated bank, 22,500 shares shall be allotted to the present shareholders of The Boston National Bank, being 3.6 shares of twenty dollars ($20.00) par value for each share of one hundred dollars ($100.00) par value now held by them, and 17,500 shares shall be allotted to the present shareholders of Continental National Bank of Boston, being 3.5 shares of twenty dollars ($20.00) par value for each share of one hundred dollars ($100.00) par value now held by them, and 10,000 shares, the balance of such authorized capital, shall be sold for cash.

The Boston National Bank

Certificate

No 1236

100 Shares

Issued to

Thomas E. Greaney

Dated June 30 1930

Transferred

Paid Rec

Dated 1/1/47 19 29

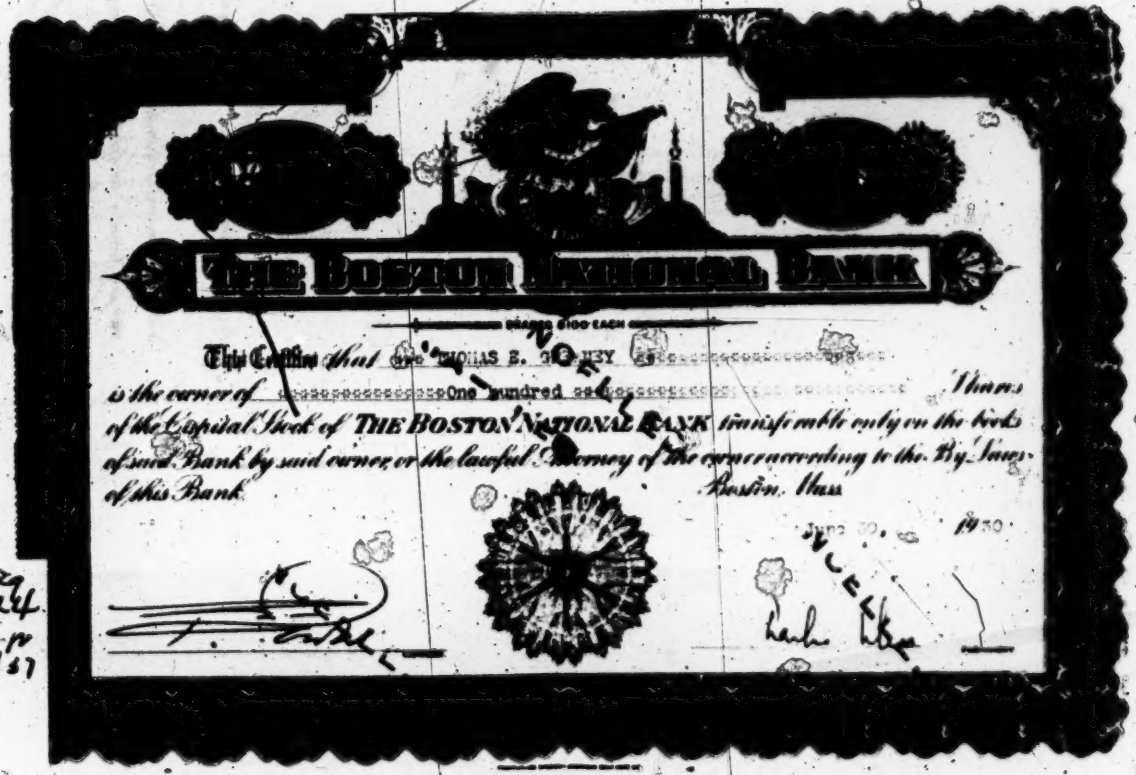
No. Original Certificate	No. Original Shares	No. of Shares Transferred
484	100	100

4111 29
1/8 ex 24
Filed pp
(Greaney's Record) 11/9/87

BNB Co

1236, 1237

Stub [illegible]


THE BOSTON NATIONAL BANK
This Certifies that
is the owner of
One hundred
Shares
of the Capital Stock of THE BOSTON NATIONAL BANK transferable only on the books of said Bank by said owner, or the Lawful Attorney of the owner according to the By-Laws of this Bank
Boston, Mass
June 30, 1930

67

3-50
1-40
NIMON KARNOW
116 BEDFORD ST

For Value received, I do hereby sell, assign and transfer unto

_____

_____

_____

_____ Three

of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____

_____ Attorney

to transfer the said stock on the books of the within named Bank with full power of substitution in the premises.

Dated July 1st 1950 19

In Presence of Edward T. Cheever

11/9/37

RE: THOMAS E. GREANEY -- R. D. MAHONEY

Certificates Surrendered	No. Shares	Name of	Date	Certificates Issued	No. Shares	Name of
949	100 B.N.B.	Reed & Co.	6/30/30	1836 B.N.B.	100	Thomas E. Greaney
972	8	Reed & Co.		1837	80	Thomas E. Greaney
1147	11	Reed & Co.				
1210	80	Ada Albert				
1161	11	Ada Albert				
1208	80	Ada Albert				
1208	10	Ada Albert				
1204	8	Ada Albert				
1809	10	Bright, Sears & Co.	7/10/30	1840	10	Thomas E. Greaney
	190				190	
1834	100 B.N.B.	Thomas E. Greaney	10/19/30	1898 B.N.B.	100	Hiram Harrow
1837	80	Thomas E. Greaney		1896	80	Hiram Harrow
1840	10	Thomas E. Greaney		1897	10	Hiram Harrow
	190				190	
1894	80 B.N.B.	Hiram Harrow	2/12/31	706 B.C.N.B.	100	Joseph Salter
1897	10	Hiram Harrow		707	100	Joseph Salter
	90			708	26	Joseph Salter
				709	97	Hiram Harrow
90 shs. B.N.B. equal to				256	.8	Joseph Salter
324 shs. B.C.N.B. on basis				257	.2	Hiram Harrow
3.6 for each B.N.B.					324	
1898	100 shs. B.N.B.					
	equal 360 B.C.N.B.	Hiram Harrow	5/ 6/31	929	100	R. D. Mahoney
709	97	Hiram Harrow		930	100	R. D. Mahoney
257	.8	Hiram Harrow		931	100	R. D. Mahoney
	457.8			932	100	R. D. Mahoney
				933	57	R. D. Mahoney
				311	.8	R. D. Mahoney
					457.8	
935	57	R. D. Mahoney	9/10/31	1083	37	R. D. Mahoney
				1084	20	R. D. Mahoney
	57				57	

R. D. Mahoney assessed 457.8 shares @ $20. per - $9,144.00

Remarks: Pencil notation on [illegible] stub "Sailed 5/7 to Thos. E. Greaney 929 thru 933".

717

69

Statement of account

Mr. T. E. Greaney
40 Old Colony Road,
Chestnut Hill,
E-M Newton, Mass.

In account with
THE NATIONAL
SHAWMUT BANK
OF BOSTON

CHECKS PAID	DEPOSITS	BALANCE
		JUL 1 80 2,364.7
23203.14-	JUL 15 80 23,203.14	JUL 1 80 25,567.9
		JUL 3 80 2,364.7
	JUL 15 IN 2.96	JUL 15 IN 2,367.7

BOSTON, MASS. 6/30 1930 SHAWMUT No.

THE NATIONAL BANK OF BOSTON 8-12

PAY TO THE ORDER OF T. E. Greaney $23203.14

DOLLARS

174 JUL 31 1930 174

NATIONAL BANK

KEY

C — Certified Check
M — Credit Memo
DV — Deposit containing uncollected items
M — Debit Memo
C — Error Correction

Ex — Exchanges (Clearing)
In — Interest
LST — List of Checks
OD — Overdrawn
RT — Returned Item

IF NO ERROR IS REPO
ACCOUNT WILL BE

Greaney account
National Shawmut
Old 2/-30-30

PLAINTIFF'S EXHIBIT 38.

AFFIDAVIT

In Re: Boston Continental National Bank and Thomas E. Greaney

I, Thomas E. Greaney, of Boston, County of Suffolk, Commonwealth of Massachusetts, under oath do make the following statements as to the facts concerning the note now dated November 3, 1931 in the sum of $14,533.66, now held by the Receiver of the Boston Continental National Bank and certain certificates of Boston Continental National Bank stock standing in the name of R. D. Mahoney.

On or about the latter part of June, 1930, the President of the Boston National Bank, Charles Ulin, informed me in substance that it was imperative that the Boston National Bank immediately take up a matter which was called a cash item that the Bank had carried for a length of time. He suggested that I interest some manufacturer or wholesaler in my district to negotiate a loan at the Bank for the purpose of taking up this cash item and that the Bank would turn over to him the Bank stock securing the cash item, and that the matter would be cleared up in a short time. Mr. Ulin had tried to get some one to do so but had not succeeded. This transaction was to be an accommodation for the Bank.

I interested one N. Karnow to do this for the Bank, and on June 28, 1930 he executed a note in the sum of $23,500 in favor of the Bank, the proceeds of the discount of this note amounting to $23,203.14 was deposited by Mr. Karnow to my account in the National Shawmut Bank of Boston on July 1, 1930, as he felt that the money did not belong to him, and I issued my check dated June 30, 1930 in favor of the Boston National Bank in the above sum, which check was cleared on July 3, 1930.

On or about December 1, 1930, Tirrell M. Ragan and Joseph Balter entered into an arrangement with Charles Ulin by which they were to buy a large block of shares of the Boston National Bank. The stock held by Mr. Karnow unbeknown to him was part of the shares concerned. As a result some of the stock held by Mr. Karnow was sur-

rendered to Ragan and Balter and on March 11, 1931 the proceeds $9,500 was applied towards the payment of the Karnow note.

On May 4, 1931 at the request of Mr. Karnow, I substituted my note, which was from time to time renewed and now is dated November 3, 1931 in the sum of $14,533.66. This note was discounted by the Bank and the proceeds deposited with the Karnow account charged against the said note of Mr. Karnow, and his note returned to him.

Neither Mr. Karnow nor myself have received any benefit from this transaction which was done purely as an accommodation for the Bank. Therefore I should not be held liable on a note in the sum of $14,533.66 bearing my personal signature as represented by asset 1025G.

Witness my hand and seal this 21st day of May, 1934.

THOMAS E. GREANEY.

Commonwealth of Massachusetts

Suffolk, ss. Boston, May 21, 1934.

Then personally appeared the above-named Thomas E. Greaney to me personally known, and under oath declared that the statements by him made are true to his best knowledge and belief.

[SEAL] Edward T. Spencer

DESIGNATION OF CONTENTS OF RECORD ON APPEAL OF DEFENDANT GREANEY TO THE CIRCUIT COURT OF APPEALS.

[Filed September 28, 1938.]

1. Amended bill of complaint.
2. Answer of defendant Greaney to said amended bill of complaint.
3. Defendant's motion to transfer cause to law side of court under Equity Rule No. 22, together with the ruling or order therein and the defendant's exception thereto.
4. The opinion of the court, with order for decree.
5. Final decree.
6. Appellant's condensed statement of testimony.
7. Portion of transcript of testimony of defendant Greaney, given at trial on December 10, 1937, as stenographically reported, being pages 8, 9, and part of page 10, of said testimony.

8. Plaintiff's Exhibit No. 38.

9. Appellant's concise statement of the points on which he intends to rely.

DANIEL J. GALLAGHER,
Attorney for THOMAS E. GREANEY, *Appellant.*

9/29/38. I Daniel J. Gallagher, attorney for said appellant, hereby certify that on September 28, 1938, I served upon Messrs. Aldridge and Fisk, attorneys for Frederick W. Deitrick—receiver appellee a true copy of within designation together with concise statement of points relied on by said appellant by mailing same postage prepaid, to said attorneys at 44 School Street, Boston, Massachusetts.

DANIEL J. GALLAGHER,
Attorney for THOMAS E. GREANEY, *Appellant.*

PLAINTIFF-APPELLEE'S DESIGNATION OF ADDITIONAL PARTS OF THE EVIDENCE.

[Filed October 6, 1938.]

The plaintiff, being the appellee herein, designates additional portions of the evidence to be included in the record on appeal, as follows:

1. The plaintiff-appellee's statement of the testimony duly filed herewith, and all such portions of the testimony of Nimon Karnow (erroneously spelled C-a-r-n-o by the reporter) and Thomas E. Greaney, in question and answer form, as are set forth therein.

2. The stipulation filed on or about June 8, 1935.

3. Plaintiff's exhibits as follows:

No. 1. Determination of insolvency (omitting certification).

3. Plaintiff's appointment (omitting certification).

4. Certificate of Consolidation (omitting certification).

5. Agreement of Consolidation (include only introductory paragraph and the first sentence of section 4).

24. Stock certificates and stubs, 1236, 1237 and 1240 (reproduce front and back of only one of the three).

25. Tabulation of defendants' stock transactions (reproduce in reduced size by planograph or similar process).

33. Photostat of account and check (reproduce in reduced size by planograph or a similar process).

Pursuant to Rule 75, Federal Rules of Civil Procedure, a statement of the above-designated testimony is herewith filed.

ALDRIDGE & FISK,
BRENTON K. FISK,
Attorneys for Plaintiff-Appellee.
44 School Street, Boston, Massachusetts.

COMMONWEALTH OF MASSACHUSETTS,
SUFFOLK, ss.

Before me, a notary public in and for said Commonwealth, personally appeared Brenton K. Fisk, who is known to me and who, being by me first duly sworn, states on oath that he has served the foregoing designation on the appellant, Thomas E. Greaney, by duly mailing a copy thereof to his attorney-of-record, Daniel J. Gallagher, at 209 Washington Street, Boston, Massachusetts, the last-known address of said attorney. BRENTON K. FISK.

Subscribed in my presence and sworn to before me, this sixth day day of October, 1938. ANNE M. CASHIN,
Notary Public.

CONCISE STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY.

[Filed September 28, 1938.]

1. The court having found as a fact that the Karnow note was given as an accommodation to the bank, for its benefit, and that the Greaney note was a substitute for the Karnow note, the Greaney note was without consideration and purely an accommodation for the bank, and is not enforceable against him, notwithstanding that he was, at the time, a director of the bank.

2. The court having found as a fact that the Karnow note was part of a scheme by the bank to conceal its illegal act, and the Greaney

note was a substitute therefore, the Greaney note is unenforceable because of illegality.

3. The court having found that the Karnow note was an acccommodation to the bank and part of a scheme by the bank to conceal its illegal act, the Greaney note having been given in substitution for the Karnow note, the Greaney note is unenforceable because of illegality.

4. The court found as a fact that the bank throughout, controlled the stock, treating it as owner, and at most pledged it as security, wherefore the bank at no time in fact parted with its ownership.

5. There is no evidence to support the finding that the defendant Greaney held himself out to the bank, or to the public, or to anyone, as owner of the stock either in his own name or in the name of R. D. Mahoney.

6. There is no evidence to support the finding that Greaney at the time of the substitution of the Greaney note for the Karnow note in May of 1931, became the owner of the stock.

7. This cause is clearly distinguishable from *Lyons* v. *Westwater,* 181 Fed. 68, and the ruling therein is not applicable to the facts in this case.

8. This is not an action against a director for violation of his duty as a director either under the Statutes or under the Common Law.

9. The receiver-plaintiff here has no greater rights, on the facts properly found, to recover on this note, than the bank could have had; since the bank could not have enforced any claim based on the Greaney note.

10. The plaintiff, although informed for a considerable time prior to commencement of this suit, of the facts substantially as found by the court (see Plaintiff's Exhibit 38), so constructed his bill of complaint, that the defendant could not properly and effectually move *in limine* to transfer the action to the law side of the court, under Equity Rule No. 22; for the reason that such motion would not then lie, but the defendant did so move within reasonable time after the plaintiff's case had been completely disclosed to the court. The court, therefore, erred in denying the defendant's motion with the resultant denial of the defendant's right to a trial by jury.

11. The Circuit Court of Appeals on its own motion has power to order the transfer to the law side of the court under Equity Rule 22, so that the defendant may exercise his constitutional right to a trial by jury.

DANIEL J. GALLAGHER,
Attorney for Appellant THOS. E. GREANEY.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
DISTRICT OF MASSACHUSETTS, ss.

I, James S. Allen, Clerk of the District Court of the United States for the District of Massachusetts, do hereby certify that the foregoing is the transcript of the record on the appeal of Thomas E. Greaney, defendant, including true copies of such proofs, entries and papers on file as have been designated in the designation of contents of record on appeal of defendant Greaney to the Circuit Court of Appeals in the cause entitled,

NO. 4114, EQUITY DOCKET,
FREDERICK S. DEITRICK, RECEIVER BOSTON-CONTINENTAL NATIONAL BANK, PLAINTIFF,
v.
THOMAS E. GREANEY, NIMON KARNOW AND R. D. MAHONEY, DEFENDANTS,

in said District Court determined.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, at Boston, in said District, this thirteenth day of December, A. D. 1938.

[SEAL] JAMES S. ALLEN, *Clerk.*

[MEMORANDUM: Orders of enlargement of time to and including December 14, 1938, are here omitted. A. I. CHARRON, *Clerk.*]

PROCEEDINGS IN CIRCUIT COURT OF APPEALS.

On January 6, 1939, this cause came on to be heard, and was fully heard by the court, Honorable George H. Bingham and Honorable Scott Wilson, Circuit Judges, and Honorable Elisha H. Brewster, District Judge, sitting.

Thereafter, to wit, on March 25, 1939, the following Opinion of the Court was filed:

OPINION OF THE COURT.

March 25, 1939.

WILSON, J. This is an appeal from a decree in equity by the District Court of Massachusetts in favor of the Receiver of the Boston-Continental National Bank, a national banking association located in Boston in the Commonwealth of Massachusetts, holding the defendant-appellant liable on a note signed by him, amounting to $14,553.66, and a part of the assets of the closed Boston-Continental National Bank, and also holding the defendant-appellant liable on an assessment by the United States Comptroller of Currency against him for $9,144 as the owner of 457.2 shares of stock of said closed bank.

The facts are as follows: Early in 1930 the Boston National Bank, in violation of the National Banking Act, 12 U. S. C. A., Sec. 83, purchased 190 shares of its own capital stock. In order to conceal this unlawful act and to deceive the National Bank Examiner, the president of the bank and Greaney, one of its directors, induced one Karnow, a small depositor in the bank, to execute and deliver to the bank for its accommodation, as the District Court found, his note for $23,500.

Karnow's note was discounted by the bank and the proceeds were deposited in another Boston bank to the credit of Greaney. Greaney then drew his check against this fund in favor of the Boston National Bank and the 190 shares of its capital stock were transferred on its books to him.

Karnow, when his note became due, was prevailed upon, against his better judgment, to renew it, and shortly thereafter the stock

standing in Greaney's name was transferred on the books of the bank to the name of Karnow and he took possession of them. The District Court found that at no time did Karnow intend to become the owner of the bank stock, but he eventually had the stock transferred to his name as security while his note was held by the bank.

In September, 1930, a consolidation of the Boston National Bank and the Continental National of Boston was effected, under the name of the Boston-Continental National Bank. The 190 shares of the National Bank then standing in Karnow's name were converted into 684 shares of the capital stock of the consolidated bank of the par value of $20 per share.

Two men by the name of Ragan, president of the Continental National Bank, and Balter, an officer of that bank, were instrumental in bringing about the consolidation of the Boston National and the Continental National Bank, and to carry out their plan it was necessary to acquire considerable stock of the Boston National Bank.

Three notes of Ragan and Balter amounting to $24,000 were delivered to Greaney with instructions to apply the proceeds to the Karnow note and to obtain from Karnow the 190 shares of the Boston National Bank stock.

It is unnecessary to outline in detail the various steps in the financial life of the Boston-Continental National Bank under the guidance of Ragan and his co-directors, so far as it relates to the 190 shares of stock and the notes given in connection therewith by Ragan and Balter, prior to the closing of its doors by the Comptroller of Currency in December, 1931. It is sufficient to say that the first note of Ragan and Balter for $9,500 came due in March, 1931, which was paid, and pursuant to an understanding with Karnow 226.8 shares of stock of the Boston-Continental National Bank was released by Karnow and he was credited on the books of the bank with a payment of $9,500 on his note of $23,500.

In May, 1931, due to the repeated insistence of Karnow, the Boston-Continental National Bank agreed to surrender Karnow's

note given to the Boston National Bank, and it was arranged to substitute Greaney's note to the Boston-Continental National Bank for $14,553.66, representing the unpaid balance of the Karnow note. At the same time the remainder of the stock standing in Karnow's name was surrendered to Greaney and was registered on the bank's books in the name of one Mahoney, a son-in-law of Greaney, but without Mahoney's knowledge or consent.

Upon the closing of the doors of the Boston-Continental National Bank, a receiver was appointed, and on July 11, 1932, an assessment was made by the United States Comptroller of Currency against all stockholders of the bank equal to the par value of their stock. The assessment on the shares of stock standing in the name of Mahoney has never been paid and this equity suit was originally brought against the three defendants, Greaney, Mahoney and Karnow, to determine the ownership of the shares and the liability of the owner or owners.

The District Court found as facts that Karnow, when he gave his note to the Boston National Bank upon the urging of Greaney and its president, and took the stock of the bank in his own name, had no intention of becoming the purchaser of the stock, and that it was also understood that his note was given solely "to accommodate the bank," and to conceal the unlawful purchase of the stock by the bank. The court also found that when Greaney's note was given in May, 1931, it was substituted for that of Karnow's, and Karnow was released thereon, and the stock of the bank standing in the name of Karnow was transferred to Greaney. While it was agreed at that time that Greaney "should take the stock on the same terms that Karnow held it" the District Court held that Greaney thereby became the owner of the stock, although he had it registered in the name of Mahoney. It cannot be denied that the entire transactions to cover up the unlawful proceedings by the Boston National Bank, or by its officials in relation to this stock, were unlawful.

The pertinent points on which the appellant relies are stated in accordance with Rule 36 of this court (1939):

"1. The court having found as a fact that the Karnow note was given as an accommodation to the bank, for its benefit, and that the Greaney note was a substitute for the Karnow note, the Greaney note was without consideration and purely an accommodation for the bank, and is not enforceable against him, notwithstanding that he was, at the time, a director of the bank.

"2. The court having found as a fact that the Karnow note was part of a scheme by the bank to conceal its illegal act, and the Greaney note was a substitute therefor, the Greaney note is unenforceable, because of illegality.

"3. The court having found that the Karnow note was an accommodation to the bank and part of a scheme by the bank to conceal its illegal act, the Greaney note having been given in substitution for the Karnow note, the Greaney note is unenforceable, because of illegality."

"8. This is not an action against a director for violation of his duty as a director either under the statutes or under the common law.

"9. The receiver-plaintiff here has no greater rights, on the facts properly found, to recover on this note than the bank could have had; since the bank could not have enforced any claim based on the Greaney note."

"11. The Circuit Court of Appeals on its own motion has power to order the transfer to the law side of the court under Equity Rule 22, so that the defendant may exercise his constitutional right to a trial by jury."

The appellant contends that the District Court erred in ruling that the defendant Greaney was liable on his note of $14,553.66, and also on the assessment against him upon the stock standing in the name of Mahoney in the additional amount of $9,144, as claimed by the appellee, and in support of his contention submits the following propositions of law:

I. Whether the receiver of a closed national bank may recover from the maker of an accommodation note given to the bank, at its request, and taken by the bank for the purpose of concealing its ownership of shares of its own stock previously acquired by it in violation of law.

II. Whether the receiver of a closed national bank may recover a stock assessment from one who holds stock registered in the

name of another as security against his promissory note given to the bank for its accommodation and to enable it to conceal its illegal ownership of said stock.

The possible injury to the bank and any potential detriment to its creditors was occasioned by the purchase of the stock by the Boston National Bank. Under these circumstances, it is submitted, the law is clear that the maker of a note may set up as a defense that such a note was given for the accommodation of the bank, and instead of the maker being precluded from asserting the defense by reason of his participation in such an illegal enterprise, a receiver of a closed bank is not permitted to enforce payment because of the bank's participation in the unlawful acts. *Rankin, Receiver,* v. *City National Bank,* 208 U. S. 541, 546.

All the cases bearing upon the liability of the maker of such a note given to a national bank for its accommodation, to enable it to conceal from a national bank examiner and the Comptroller of Currency its true financial condition, we think establish the following propositions:

"(1) the maker of such a note may set up lack of consideration as a defense;

"(2) participation by the maker and the bank acting through its officials in such an illegal transaction does not aid the bank's receiver in a suit to recover on such a note, but precludes recovery by him;

"(3) in a suit to recover on such a note the receiver of the bank is in no better position than the bank itself would have been."

In *Yates Center National Bank* v. *Lauber,* 240 Fed. 237, pursuant to an arrangement to help the officers conceal the financial condition of the bank, the bank turned over certain worthless notes to the defendant for his note, and agreed that it would at any time accept them in satisfaction of his note. The court refused to hold the defendant liable, saying:

(Page 238) ". . . the illegality of the entire matter so clearly appears as to prevent a court of justice from affording any relief based thereon."

In *Cutler* v. *Fry,* 240 Fed. 238, the defendant was induced to

give his note in exchange for the president's note, to help conceal defalcations of the president, under an agreement that the bank would at any time take the president's note in payment of the defendant's note. The court held that lack of consideration was a defense, and said:

(Page 239) "However, the rights of the receiver of the bank to recover on the note in question rise no higher than the rights of the bank had insolvency not intervened. . . . but in the hands of the original payee or its receiver, as in this case, both the note and the contemporaneous agreement constituted the entire contract between the parties, and, when the agreement thus formed is presented, the illegality of the whole matter so clearly appears the court will leave the parties where it finds them by refusing all relief. *Rankin* v. *City National Bank*, 208 U. S. 541; *McMullen* v. *Hoffman*, 174 U. S. 639."

In *Yates Center National Bank* v. *Schaede*, 240 Fed. 240, affirmed without opinion by the Circuit Court of Appeals for the Eighth Circuit (240 Fed. 241), the court refused to enforce a note given to a bank without consideration to conceal the defalcations of its president, saying:

(Page 240) "Not only is this defense (*want of consideration*) made out, but it further appears that the whole transaction, from the making of the original note to the renewal in controversy, was without consideration, and in pursuance of the illegal and criminal design of the president of the bank. Such state of facts, public policy and good morals alike condemn, and courts refuse to enforce."

In *Andresen* v. *Kaercher*, 38 Fed. (2d) 462, 464 (C. C. A. 8), the bank had a claim against the estate of one Kaercher and entered into an agreement with the defendants whereby the defendants deeded certain real estate to the bank (which was to be sold as soon as possible) and gave to the bank accommodation notes so that the bank might be able to show them as assets until the real estate should be sold. The trial court directed a verdict for the defendants, and this decision was affirmed on appeal.

The court answered the argument that the defendants had

been guilty of a concerted attempt to deceive the national bank examiner and the Comptroller of Currency as to the exact financial condition of the bank in the following language:

(Page 464) "But, be this as it may, the result is not affected, because the court will not lend its assistance in any way towards carrying out an illegal contract, nor will it enforce any alleged rights directly springing from such a contract. *McMullen* v. *Hoffman*, 174 U. S. 639. In this view the bank itself could not have collected, nor is the receiver more advantageously situated."

In the case of *Rankin, Receiver* v. *City National Bank*, 208 U. S. 541, the president of a bank arranged with the defendant bank to discount his individual note and deposit the proceeds to a special account in the name of his bank (the Guthrie Bank) under an arrangement whereby these funds were not to be drawn against, but were to remain with the City National Bank until the note was paid. The purpose of this transaction was to effect a reduction of certain loans to which the examiner had objected as excessive. The president gave his bank a check on the City National Bank, the amount of which was credited to his personal account, and on the same day he gave his bank a check on his personal account, which was credited to bills receivable and the objectionable notes were taken out of the bank's assets. The receiver of the Guthrie Bank sued to recover the deposit to its credit which the City National Bank had offset against the note held by it on the day that the Guthrie Bank closed. It was agreed by the parties that the transaction between the banks was not illegal, but in affirming a decision in favor of the defendant bank, the court enunciated certain well-defined principles in the following language:

(Page 545) ". . . the whole business, from beginning to end, was and was intended to be a mere juggle with books and paper to deceive the bank examiner. The City Bank never received anything from the Guthrie Bank, the Guthrie Bank never parted with anything to the City Bank, or with anything for the loss of which the City Bank is responsible, if it parted with anything at all."

(Page 546) "As between the banks no one got any money, and the only benefit of the loan in fact or contemplation was a swindle upon the bank examiner. . . . If the Guthrie Bank had sued while it was a going concern it could not have recovered, and the receiver stands no better than the bank."

Also see *Petersen* v. *Tillinghast*, 192 Fed. 287 (C. C. A.); *Deitrick* v. *Standard Surety & Casualty Co.*, 90 Fed. (2d) 862, 865.

The foregoing authorities, it is submitted, establish the rule that, where a note is given to a national bank without consideration and for its accommodation to conceal its true financial condition from a national bank examiner or the Comptroller's office, the maker may set up the defense of lack of consideration as against the receiver of a closed national bank. In an action by the receiver the courts will not enforce a note given as part of such an illegal transaction by the bank. Appointment of a receiver does not absolve such a note of the taint of illegality. His rights are in no way superior to the rights of the bank, and the time-honored principle denying enforcement of illegal obligations holds. The receiver is therefore barred from recovery on Greaney's note.

A different situation, however, exists where the receiver of a closed national bank undertakes to collect an assessment by a Comptroller against a person permitting stock of a bank to stand in his name on the books of the bank, or in the name of another for his benefit.

While neither a bank nor a receiver can collect a note given and accepted by the bank to deceive a national bank examiner as to an unlawful purchase of the bank's own stock, a suit by a receiver to collect an assessment by the United States Comptroller on the stock of the bank stands on a different footing. Such an assessment is lawful. It is independent of any method by which the stockholder acquired the stock. It is authorized by the National Banking Act, 12 U. S. C. A. 191, 192, and falls on every person who in law may be treated as the owner of the stock.

The assessment in this case was not made pursuant to any unlawful acts by the officers of the bank, in which they partici-

pated, *Trustees of Somerset Academy* v. *Picher*, 90 Fed. (2d) 741, 744. Any judgment recovered on an assessment is not for the benefit of the bank, but is for the benefit of creditors of the bank. *Dunn et al.* v. *O'Conner et al.*, 89 Fed. (2d) 820, 826; *Page* v. *Jones*, 7 Fed. (2d) 541, 544, cert. denied, 269 U. S. 587. It appearing that there are insufficient assets to discharge the liabilities of a closed national bank, the Comptroller of Currency under the provisions of the National Banking Act, may assess against each owner of a share or shares of the outstanding stock of a closed bank, or against any person whom the law regards as standing in the relation of owner, a sum, not exceeding the par value of such stock, which in the aggregate shall be sufficient to discharge the liabilities of the bank. R. S., Sec. 5151, as amended by Sec. 23, 38 Stat. 273; also see 12 U. S. C. A., Secs. 63 and 64, 191, 192; *Harper* v. *Moran*, 76 Fed. (2d) 980, 982.

Whether Karnow would have been liable for the assessment if the Boston-Continental stock had been standing in his name at the time of the assessment is immaterial, as his shares of stock, prior to the assessment, had been lawfully transferred to Greaney, who had them registered in the name of his son-in-law, Mahoney, and they remained in Mahoney's name on the books of the bank until this suit was brought. Mahoney, when he learned what had been done, denied all knowledge of it, and the judgment in this case freed him and also Karnow of all liability on the assessment, *Finn* v. *Brown*, 142 U. S. 56.

When Ragan and Balter sought to purchase shares of the Boston National Bank stock in order to carry through their plan for the consolidation of the Boston National Bank and the Continental National Bank, after some preliminary negotiations, they signed three notes in the total principal amount of $24,000, which were given to Greaney to discharge any obligation Karnow had assumed by giving his accommodation note to the bank and to acquire for them the shares standing in the name of Karnow, which it was originally suggested should be held as security for his note given to the Boston National Bank and which was found among the assets of the consolidated banks.

When the first of the three notes came due, Ragan and Balter notified Greaney to have Karnow deliver up sufficient shares of the Boston-Continental National Bank stock to represent the face of the due note, *i. e.*, $9,500, at the price agreed upon between Ragan and Balter and Ulin and Greaney. Karnow, thereupon, on payment of the note, surrendered 226.8 shares of the Boston-Continental stock, which was turned over to the bank, or Ragan and Balter, and Karnow received credit at the bank on his note for the amount.

Karnow then insisted that he be relieved of further responsibility, if any, on the balance of his accommodation note held by the bank, and it was finally arranged with Greaney and the bank, through Ragan and Balter, that Greaney would take over the balance of the Karnow note of $14,553.66; whereupon Greaney signed a new note to the bank for that amount and the Karnow stock was delivered to Greaney, who had the stock transferred directly into the name of his son in-law, Mahoney, but, as stated above, without Mahoney's knowledge or consent.

Greaney now held two notes of Ragan and Balter for which he had agreed to transfer to them, when paid, the remaining 457.2 shares of Boston-Continental stock formerly held by Karnow, though now registered on the books of the bank in the name of his son-in-law, Mahoney, and on payment of which the note given by Greaney in discharge of Karnow's note would be cancelled. Ragan and Balter would then presumably have acquired the stock which they coveted, and Greaney would be relieved of any liability on his note given to remove Karnow's name from any paper held by the bank.

The District Court held that as to the assessment by the Comptroller, Greaney must be regarded as the beneficial owner of this stock. We think that he stood in that relation as to the receiver suing to collect an assessment by the Comptroller. Having registered the stock in Mahoney's name, without Mahoney's knowledge, Greaney cannot thereby in this suit escape any liability that would follow if the stock was registered in his own name. Greaney cannot now deny whatever liability followed from permitting the

stock to remain on the books of the bank in the name of Mahoney for his benefit.

When the second note of Ragan and Balter came due, Greaney signed a transfer of some of those shares standing in Mahoney's name without consulting Mahoney, and delivered to the bank certificates for the stock to be delivered to Ragan and Balter in consideration of the payment of their second note. On their failure to make payment for the note, the certificates were redelivered to Greaney. He then brought suit on their note. We think there was sufficient evidence to warrant the District Court in holding that Greaney, with respect to the assessment against him, and after the giving of the Ragan and Balter notes and transfer of the stock to him, had control over this stock.

But, assuming that the stock resulted from the unlawful transaction between him and the Boston National Bank by which Karnow was prevailed on to give his accommodation note to the bank, and that these shares of stock were turned over to Karnow as security for the note which he had given to the bank, and that Greaney took the stock and note from Karnow as an accommodation note with whatever defects or defenses Karnow might have had as against the bank, we are not now considering a claim of the bank or its receiver based on Greaney's note, but as against a Comptroller's assessment and a suit by a receiver to collect it. Greaney could not rely on any defenses he or Karnow might have had against the receiver in a suit on the note originally given to the bank as an accommodation and without consideration. If Karnow had held the stock registered in his name after the assessment was made, he might have been liable for the assessment as the owner of the stock, but Karnow had previously transferred it in good faith to Greaney. By Greaney's order it was registered in the name of his dummy, Mahoney, but in equity it is regarded as though registered in Greaney's own name.

Greaney's status in the suit by the receiver to collect the assessment is not affected by his participation in the unlawful transaction between him, Ulin and the Boston National Bank. The Comptroller was not a party to any unlawful transaction. On

this branch of the case Greaney is not sued on his note by a party equally guilty as himself of unlawful acts. The imposition of the liability for the assessment of the Comptroller is statutory and is independent of any liability of Greaney on his note or lack of it. Greaney as against the lawful acts of the Comptroller could not set up as a defense an unlawful transaction in which he participated, but in which the Comptroller did not participate. When Greaney again finally acquired this stock, he had it registered in the name of a dummy who appeared on the books of the bank as the owner. The question is, can Greaney, under these circumstances, deny ownership of this stock in the action by a receiver of a closed national bank to collect an assessment by a Comptroller? We think not.

The agreement with Ragan and Balter was a new and independent transaction, which, so far as appears in the record, has nothing to do with the method by which Greaney, or Karnow, acquired the bank stock. Ragan and Balter wanted the stock standing in Karnow's name to carry through their plan of consolidation of the two banks. They entered into what appears to be a legitimate transaction with Greaney to acquire for them the stock standing in Karnow's name, agreeing to pay therefor an adequate price, which would also have enabled Greaney to discharge his note given as a substitute for Karnow's. Notes of Ragan and Balter were delivered to Greaney, from the proceeds of which as they came due and on the delivery of the stock he was to discharge Karnow on his note at the bank. Greaney, to satisfy Karnow, arranged to take over the balance of Karnow's note, for which he was, at least, morally responsible.

In effect, under such circumstances, the law regards the stock registered in the name of his dummy, Mahoney, as standing in the name of Greaney. Greaney allowed it to remain in Mahoney's name on the books of the bank. Equity will not permit Greaney to escape liability by such a subterfuge.

The authorities are in accord that the beneficial or actual owner of the stock is liable for an assessment by the Comptroller, the stock being registered in the name of another.

In *McCandless* v. *Haskins et al.*, 28 Fed. (2d) 693, 694, the court said:

"Some contention is made by plaintiff that the bank was without power to purchase its own capital shares. While this may be true, yet that is not the decisive question in this case. The plaintiff charged in its petition the defendants owned the shares in question, and, because they owned the same, were liable for the assessment."

The general rule covering the liability of stockholders is stated in *Welles* v. *Larrabee*, 36 Fed. 866, 869:

"The liability sought to be enforced is purely statutory, and the declaration of the statute is that 'the shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association to the extent of the amount of their stock therein at the par value thereof,' etc. Section 5151, Rev. St. (now 12 U. S. C. A., Sec. 64.) To be liable, the party charged must be a shareholder, and by the construction placed upon these and similar provisions in other statutes it is held that the actual shareholder cannot escape liability by placing the legal title of his shares in the name of a third party."

In *Forrest* v. *Jack*, 294 U. S. 158, 162, the court said:

"The liability of stockholders is based upon the statute, Sec. 64. As a general rule, the person in whose name the stock stands on the books of the bank is liable, but the actual owner may be held although the stock has not been registered in his name."

Also see *Ohio Valley National Bank* v. *Hulitt*, 204 U. S. 162; *Durance* v. *Collier*, 81 Fed. (2d) 4; *Early* v. *Richardson*, 280 U. S. 496; *McDonald* v. *Dewey*, 202 U. S. 510; 9 C. J. Sec., p. 1114; *National Bank* v. *Case*, 99 U. S. 628, 631.

There is no merit in the contention that the case should have been transferred to the law side. It presented complicated questions as to ownership of the stock of these banks and fraud is involved, which is a ground of equity jurisdiction. In any event, the defendant does not seem seriously to press his contention. Nor was its motion to transfer to the law side presented *in limine*.

Its bill of complaint was filed March 11, 1936. His motion to transfer was not made until November 15, 1937.

"The want of equity jurisdiction, if obvious, may and should be objected to by the court of its own motion. *Twist* v. *Prairie Oil Co.*, 274 U. S. 684, 690. In other cases, this jurisdictional requirement, unlike the others mentioned, may be treated as waived if the objection is not presented by the defendant *in limine*. *Duignan* v. *United States*, 274 U. S. 195, 199." *Matthews* v. *Rodgers*, 284 U. S. 524, 525.

"Equity jurisdiction may be invoked where there are complicated matters and interests and degrees of interests involved, and where fraud upon creditors is involved in the transfer which is assailed. *Adams* v. *Clarke* (C. C. A.), 22 F. (2d) 957; *Corker* v. *Soper* (C. C. A.), 53 F. (2d) 190; *McDonald* v. *Dewey*, 202 U. S. 510. . . . While the appellants denied in their answer the equity jurisdiction of the court, yet they made no resort to the usual procedure of a motion to dismiss the petition or to transfer the case to the law docket, and seemingly acquiesced in the equity proceedings. However this may be, it is clear that this case is one essentially for equitable cognizance." *Metropolitan Holding Co.* v. *Snyder*, 79 Fed. (2d) 263, 268.

The decree of the District Court, in so far as it holds Greaney liable on his note for $14,553.66 is reversed, and a decree may be entered dismissing the suit as to Greaney in so far as it involves his liability on this note. The decree of the District Court is affirmed as to Greaney's liability in the amount of $9,144, the amount of the assessment on the 457.2 shares of stock of the Boston Continental National Bank, with interest to the date of judgment.

On the same date, to wit, March 25, 1939, the following Final Decree was entered:

FINAL DECREE.

March 25, 1939.

This cause came on to be heard January 6, 1939, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now, to wit, March 25, 1939,

here ordered, adjudged and decreed as follows: The decree of the District Court, in so far as it holds Greaney liable on his note for $14,553.66 is reversed, and a decree may be entered dismissing the suit as to Greaney in so far as it involves his liability on this note. The decree of the District Court is affirmed as to Greaney's liability in the amount of $9,144, the amount of the assessment on the 457.2 shares of stock of the Boston Continental National Bank, with interest to the date of judgment.

By the Court,

ARTHUR I. CHARRON, *Clerk.*

Thereafter, to wit, on April 21, 1939, mandate was stayed until further order of court.

CLERK'S CERTIFICATE.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the printed pages, numbered 1 to 91, inclusive, hereto prefixed, contain and are a true copy of the record and all proceedings to and including April 26, 1939, in the cause in said court numbered and entitled,

No. 3415.

THOMAS E. GREANEY, DEFENDANT, APPELLANT,

v.

FREDERICK S. DEITRICK, RECEIVER, PLAINTIFF, APPELLEE.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this twenty-sixth day of April, A. D. 1939.

[SEAL] ARTHUR I. CHARRON, *Clerk.*

[fol. 92] [Stamp:] Office of the Clerk, Supreme Court, U. S. Jun. 2, 1939

SUPREME COURT OF THE UNITED STATES

No. —, October Term, 1938

FREDERICK S. DEITRICK, Receiver, Petitioner,

vs.

THOMAS E. GREANEY

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for the petitioner, and good cause having been shown, I hereby order that the time for filing a petition for a writ of certiorari in the above-entitled cause be, and the same is hereby, extended for a period of thirty-five days from June 25, 1939.

Felix Frankfurter, Associate Justice Supreme Court of the United States.

Washington, D. C., June 2, 1939.

[fol. 92] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.